TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 593

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, ET AL., PETITIONERS

vs.

LUKENS STEEL COMPANY, ALAN WOOD STEEL COMPANY, SOUTH CHESTER TUBE COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED DECEMBER 16, 1939
CERTIORARI GRANTED FEBRUARY 5, 1940

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 593

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, ET AL., PETITIONERS

VS.

LUKENS STEEL COMPANY, ALAN WOOD STEEL COMPANY, SOUTH CHESTER TUBE COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

	Page
Record from D. C. U. S., District of Columbia	1
Caption	1
Complaint for injunction and declaratory judgment	2
Exhibit A—Notice of hearing before Public Contracts Board	45
Exhibit B—Report of Public Contracts Board	47
Exhibit C—Petition for reopening of hearing before Public Contracts Board	218
Exhibit D—Exceptions to report of Public Contracts Board	230
Exhibit E—Determination, Jan. 16, 1939	239
Exhibit F—Order postponing effective date of determination	254
Exhibit G—Statement of base rates for common labor	255
Motion for preliminary injunction	259
Affidavits in support of preliminary injunction	263
Darwin S. Wolcott	263
John W. Logan	266
Francis J. Tucker	269
Henry S. Evans	272
Wilbert Wear	275
J. A. Downey	277
Marjorie Wilford	279
Temporary restraining order	281
Order setting cause down for final hearing	285
Notice of final hearing	285
Order setting cause down for hearing on motion to dismiss, &c.	288

	Page
Record from D. C. U. S., District of Columbia—Continued.	
Motion to dismiss complaint	288
Defendants' notice of motion to dismiss	289
Motion of Steel Workers Organizing Committee for leave to intervene	290
Notice of Motion for leave to intervene	291
Petition of Steel Workers Organizing Committee for leave to intervene	292
Exhibit A—Letter, Murray to Secretary of Labor	296
Affidavit of Henry S. Evans	297
Affidavit of John W. Logan	298
Affidavit of Fred W. Morrison	300
Affidavit of Darwin S. Wolcott	301
Affidavit of James A. Downey	303
Affidavit of John W. Logan	304
Affidavit of John W. Logan	305
Order granting leave to amend complaint	306
Schedule A—Amendments to complaint	307
Affidavit of Roberts B. Thomas	312
Amendments to complaint for injunction and declaratory judgment	313
Affidavit of Roberts B. Thomas	318
Order making of record extensions of temporary restraining order	318
Order denying motion, and dismissing petition, of Steel Workers Organizing Committee for leave to intervene	319
Judgment dismissing complaint, as amended; exception of plaintiffs; appeal noted	319
Undertaking fixed at two hundred and fifty dollars with leave to deposit one hundred dollars in lieu thereof	320
Notice of appeal	320
Memorandum: $100 deposited by Gardiner, Morrison & Rogers for plaintiffs in lieu of bond on appeal	322
Assignment of errors	322
Docket entries	323
Praecipe and designation of record	327
Clerk's certificate	328
Addition to Record	328
Clerk's certificate	328
Affidavit of Edward J. Ennis	329
Affidavit of M. L. Ring	331
Defendants' cross-designations of record	335
Proceedings in U. S. C. A., District of Columbia	337
Petition for temporary injunction pending final hearing, etc	337
Schedule A—Proposed form of order	352
Index to exhibits	355
Appellees' objections to petition for injunction	356
Exhibit C—Points and authorities on motion to dismiss in District Court	364
Affidavit of John W. Logan	367
Affidavit of George W. Witner	368
Agreement between South Chester Tube Co. and United Tube Workers Lodge No. 184, Pa	369
Minute entry of hearing on petition for injunction	371
Order granting injunction pendente lite	372
Motion for reargument or a more specific injunction and security	373
Exhibit A—Procurement circular No. 6	378

	Page.
Appellants' objections to motion for reargument, etc.	380
Minute entry of argument and submission	385
Motion to dissolve temporary injunction	386
Opinion, per curiam and order	387
Opinion, Miller, J.	388
Dissenting opinion, Edgerton, J.	405
Judgment	410
Motion to substitute party appellee	411
Exhibit A—Stipulation	412
Order granting motion to substitute party appellee	413
Designation of record	413
Designation of additional parts of record	415
Clerk's certificate	416
Order allowing certiorari	416

United States Court of Appeals for the District of Columbia

JANUARY TERM, 1939.

No. 7368

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, CENTRAL IRON & STEEL COMPANY, A CORPORATION, HARRISBURG STEEL CORPORATION, A CORPORATION, THE EASTERN ROLLING MILL COMPANY, A CORPORATION, AND THE ATLANTIC WIRE COMPANY, A CORPORATION, APPELLANTS,

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. McLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALFE WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, HENRY MORGENTHAU, JR., INDIVIDUALLY AND AS SECRETARY OF THE TREASURY OF THE UNITED STATES, CHRISTIAN JOY PEOPLES, INDIVIDUALLY AND AS DIRECTOR OF THE PROCUREMENT DIVISION OF THE DEPARTMENT OF THE TREASURY OF THE UNITED STATES, CLAUDE AUGUSTUS SWANSON, INDIVIDUALLY AND AS SECRETARY OF THE NAVY OF THE UNITED STATES, HARRY HINES WOODRING, INDIVIDUALLY AND AS SECRETARY OF WAR OF THE UNITED STATES, HAROLD L. ICKES, INDIVIDUALLY AND AS SECRETARY OF THE INTERIOR OF THE UNITED STATES, AND JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

INDEX.

	Original	Print
Caption	A	1
Complaint for injunction and declaratory judgment	1	3
Exhibit A	33	45
Exhibit B	34	47
Exhibit C	181	218
Exhibit D	201	230
Exhibit E	213	239
Exhibit F	232	254
Exhibit G	233	255
Motion for preliminary injunction	236	259
Affidavits:	242	263
Darwin S. Wolcott	243	263
John W. Logan	248	266
Francis J. Tucker	254	269
Henry S. Evans	259	272
Wilbert Wear	263	275
J. A. Downey	267	277
Marjorie Wilford	270	279
Temporary restraining order	273	281
Order setting cause down for final hearing	280	285
Notice of final hearing	281	285
Order setting cause down for hearing on motion to dismiss, &c.	284	288
Motion to dismiss complaint	285	288
Defendants' notice of motion to dismiss	286	289
Motion of Steel Workers Organizing Committee for leave to intervene	287	290
Notice of Motion for leave to intervene	289	291
Petition of Steel Workers Organizing Committee for leave to intervene	291	292
Exhibit A	295	296
Affidavit of Henry S. Evans	297	297
Affidavit of John W. Logan	299	298
Affidavit of Fred W. Morrison	301	300
Affidavit of Darwin S. Wolcott	303	301
Affidavit of James A. Downey	306	303
Affidavit of John W. Logan	307	304
Affidavit of John W. Logan	309	305
Order granting leave to amend complaint	311	306
Schedule A	312	307
Affidavit of Roberts B. Thomas	317	312
Amendments to complaint for injunction and declaratory judgment	318	313
Affidavit of Roberts B. Thomas	323	318
Order making of record extensions of temporary restraining order	324	318
Order denying motion, and dismissing petition, of Steel Workers Organizing Committee for leave to intervene	325	319

INDEX CONTINUED.

	Original	Print
Judgment dismissing complaint, as amended; exception of plaintiffs; appeal noted;	326	319
Undertaking fixed at two hundred and fifty dollars with leave to deposit one hundred dollars in lieu thereof	327	320
Notice of appeal	328	320
Memorandum: $100 deposited by Gardiner, Morrison & Rogers for plaintiffs in lieu of bond on appeal	330	322
Assignment of errors	331	322
Docket entries	335	324
Praecipe and designation of record	337	327
Clerk's certificate	340	328
Addition to Record	341	328

United States Court of Appeals for the District of Columbia

A. District Court of the United States
For the District of Columbia.

Civil Action File No. 1839

LUKENS STEEL COMPANY, a corporation, ALAN WOOD STEEL COMPANY, a corporation, SOUTH CHESTER TUBE COMPANY, a corporation, et al., *Plaintiffs*,

—against—

FRANCES PERKINS, individually and as Secretary of Labor of the United States, CHARLES V. MCLAUGHLIN, individually and as Assistant Secretary of Labor of the United States, L. METCALFE WALLING, individually and as Administrator of the Division of Public Contracts of the Department of Labor of the United States, et al., *Defendants*.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, that in the District Court of the United States for the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the District Court of the United States
For the District of Columbia.

Civil Action File No. 1839

LUKENS STEEL COMPANY, a corporation (street post office address: Coatesville, Pennsylvania), ALAN WOOD STEEL COMPANY, a corporation (street post office address: Conshohocken, Pennsylvania), SOUTH CHESTER TUBE COMPANY, a corporation (street post office address: Chester, Pennsylvania), CENTRAL IRON & STEEL COMPANY, a corporation (street post office address: Harrisburg, Pennsylvania), HARRISBURG STEEL CORPORATION, a corporation (street post office address: Harrisburg, Pennsylvania), THE EASTERN ROLLING MILL COMPANY, a corporation (street post office address: Colgate, Maryland), and THE ATLANTIC WIRE COMPANY, a corporation (street post office address: Branford, Connecticut), *Plaintiffs*,

—against—

FRANCES PERKINS, individually and as Secretary of Labor of the United States, CHARLES V. McLAUGHLIN, individually and as Assistant Secretary of Labor of the United States, L. METCALFE WALLING, individually and as Administrator of the Division of Public Contracts of the Department of Labor of the United States, HENRY MORGENTHAU, JR., individually and as Secretary of the Treasury of the United States, CHRISTIAN JOY PEOPLES, individually and as Director of the Procurement Division of the Department of the Treasury of the United States, CLAUDE AUGUSTUS SWANSON, individually and as Secretary of the Navy of the United States, HARRY HINES WOODRING, individually and as Secretary of War of the United States, HAROLD L. ICKES, individually and as Secretary of the Interior of the United States, and JAMES A. FARLEY, individually and as Postmaster General of the United States, *Defendants.*

Filed February 25, 1939

Complaint for Injunction and Declaratory Judgment.

To the Honorable, the Judges of the District Court of the United States for the District of Columbia:

The plaintiffs above named respectfully represent to the Court as follows:

1. This action is a civil action of which this Court has jurisdiction by virtue of the provisions of Sections 41 and 44 of Title 18 of The Code of the District of Columbia, as hereinafter more fully appears. The defendants are residents of or found within the District of Columbia.

2. The action arises, as hereinafter more fully appears, under the Act of Congress approved June 30, 1936 (Public —No. 846—74th Congress; 49 Stat. 2036-2039, c. 881; United States Code, Supplement IV, Title 41, Secs. 35-45), which Act is hereinafter referred to either as the Public Contracts Act or as the Act. The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000. This Court has jurisdiction thereof pursuant to the provisions of Section 43 of Title 18 of The Code of the District of Columbia.

2 3. Plaintiff Lukens Steel Company (hereinafter sometimes referred to as Lukens) is a corporation incorporated under the laws of the Commonwealth of Pennsylvania and engaged in the production and sale of certain products of the iron and steel industry. It owns and operates at Coatesville, which is in the County of Chester in said Commonwealth and is approximately 38 miles from Philadelphia Pennsylvania, and approximately 312 miles from Pittsburgh, Pennsylvania, a plant which has an annual capacity of 350,000 tons of sheared plates, 85,000 tons of universal plates and 25,000 tons of rolled blooms and billets for forging purposes. The principal products manufactured and sold by Lukens are sheared plates, universal plates and flanged and dished heads.

At its above-mentioned plant Lukens employs at the present time approximately 2,000 wage earners, of whom approximately 125 are common laborers. Such common laborers are paid at the rate of 56½ cents an hour. Substantially all the other wage owners employed by Lukens at

such plant are paid at rates of pay in excess of such rate of pay for common labor.

Lukens is a party to an agreement with the Steel Workers Organizing Committee by and under which a minimum basic hourly earning of 56½ cents is prescribed and paid.

The common labor wage rate paid by Lukens as aforesaid is the same as that paid by the only other iron and steel company located in Coatesville. Such common labor wage rate is equal to or higher than that paid by all other industries located in Coatesville.

Lukens has sold iron and steel products to various agencies of the United States for many years and desires to continue to bid on contracts of agencies of the United States for such products in the future. The amounts of the gross sales by Lukens of iron and steel products to agencies of the United States during the years 1937 and 1938 are $107,750 and $277,749, respectively. The agencies of the United States to which Lukens sold iron and steel products in such years were the Department of the Navy, including the Bureau of Supplies and Accounts and various navy yards, and the Department of War. The principal products which were sold to such agencies during such years were plates.

Lukens presently is a party to four contracts made with the Department of the Navy, the performance of which has not been completed. The sales price of the iron and steel products to be furnished under such contracts is approximately $100,000.

4. Plaintiff Alan Wood Steel Company (hereinafter sometimes referred to as Alan Wood) is a corporation incorporated under the laws of the Commonwealth of Pennsylvania and engaged in the production and sale of certain products of the iron and steel industry. It owns and operates a plant at Ivy Rock, in the County of Montgomery in said Commonwealth, which has an annual capacity of 660,000 tons of steel ingots, 130,000 tons of sheared plates and 234,100 tons of rolled blooms and billets; a plant at Conshohocken, in said County, which has an annual capacity of 108,000 tons of hot and cold rolled sheets; and a plant at Swedeland, in said County, which has an annual capacity of 406,080 tons of pig iron. All said plants are located ap-

proximately 15 miles from Philadelphia, Pennsylvania, and approximately 340 miles from Pittsburgh, Pennsylvania.

At its above-mentioned plants Alan Wood employs
3 at the present time approximately 1,500 wage earners, of whom approximately 225 are common laborers. Such common laborers are paid at the rate of 56½ cents an hour, which is the base rate of pay of Alan Wood for common labor. Substantially all the other wage earners employed by Alan Wood at such plants are paid at rates of pay in excess of such base rates of pay for common labor, which rates are, in most instances, computed by adding various differentials to such base rate.

Alan Wood is a party to an agreement with the Steel Workers Organizing Committee and said base rate of pay for common labor of 56½ cents an hour is paid pursuant to said agreement.

Alan Wood has sold iron and steel products to various agencies of the United States for many years and desires to continue to bid on contracts of agencies of the United States for such products in the future. The amounts of the gross sales by Alan Wood of iron and steel products to agencies of the United States during the years 1937 and 1938 are approximately $134,000 and $185,400, respectively. The agencies of the United States to which Alan Wood sold iron and steel products in such years included the Departments of the Navy, War and Interior, and the principal products which were sold to such agencies were steel sheets and plates.

Alan Wood has on its books unfilled orders under contracts made with and purchase orders from the Department of the Navy and the Department of War for iron and steel products, the aggregate sales price of which is approximately $200,000.

5. Plaintiff South Chester Tube Company (hereinafter sometimes referred to as South Chester) is a corporation incorporated under the laws of the Commonwealth of Pennsylvania and engaged in the production and sale of certain products of the iron and steel industry. It owns and operates at Chester, which is in the County of Delaware in said Commonwealth and is approximately 15 miles southwest of Philadelphia, a plant which has an annual capacity of 85,000 tons of wrought iron and steel pipe.

At its above-mentioned plant South Chester employs at the present time approximately 560 productive workers, of whom approximately 100 are common laborers. Such common laborers are paid at the rate of 56½ cents an hour, which is the base rate of pay of South Chester for common labor. All the other wage earners employed by South Chester at such plant are paid at rates of pay in excess of such base rate of pay for common labor.

The common labor base rate of 56½ cents an hour paid by South Chester as aforesaid is paid pursuant to a contract with Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge No. 184.

Said common labor base rate is higher than the minimum wage rate for common labor paid by more than two-thirds of the 25 leading industrial, utility and railroad concerns operating in the City of Chester, Pennsylvania.

During the years 1937 and 1938, South Chester sold pipe to, among others, the Department of the Navy. South Chester desires to continue to bid on contracts of agencies of the United States for products manufactured by it.

6. Plaintiff Central Iron & Steel Company (hereinafter sometimes referred to as Central) is a corporation incorporated under the laws of the Commonwealth of Pennsylvania and engaged in the production and sale of certain products of the iron and steel industry. It owns and operates in the City of Harrisburg, in the County of Dauphin in said Commonwealth, a plant which has an annual capacity of 200,000 tons of sheared plates and sheets, universal plates and rolled blooms and billets for forging purposes.

4

At its above-mentioned plant Central employs at the present time approximately 1,200 wage earners, of whom approximately 150 are common laborers. Such common laborers are paid at the rate of 54 cents an hour, which is the base rate of pay of Central for common labor. Substantially all the other wage earners employed by Central at such plant are paid at rates of pay in excess of such base rates of pay for common labor, which rates are, in most instances, computed by adding various differentials to such base rate.

Central has sold iron and steel products to various agencies of the United States for more than 20 years, and only

during short periods in that time has it been without a Government contract in progress. It desires to continue to bid on contracts of agencies of the United States for such products in the future. The tonnage of products furnished by Central to agencies of the United States during the last ten years has averaged about 8% of the tonnage of Central. The products which Central has manufactured or furnished to such agencies include plates, slabs and sheets. The agencies of the United States to which such products have been sold, pursuant to contracts, include the Department of the Navy and the War Department.

7. Plaintiff Harrisburg Steel Corporation (hereinafter sometimes referred to as Harrisburg) is a corporation incorporated under the laws of the Commonwealth of Pennsylvania and engaged in the production and sale of certain products of the iron and steel industry. It owns and operates in the City of Harrisburg, in the County of Dauphin in said Commonwealth, a plant which has an annual capacity of 77,500 tons of steel ingots. Among the products manufactured by it are steel billets, slabs, coils, couplings, cylinders, flanges, liquefiers and munitions.

At its above-mentioned plant Harrisburg employs at the present time approximately 815 wage earners, of whom approximately 35 are common laborers. Such common laborers are paid at the rate of 54 cents an hour, which is the base rate of pay of Harrisburg for common labor. All the other wage earners employed by Harrisburg at such plant are paid at rates of pay in excess of such base rate of pay for common labor, which rates are computed by adding various differentials to such base rate.

Harrisburg has for upwards of 20 years entered into and performed contracts with various agencies of the United States with respect to the sale of steel products and desires to continue to bid on such contracts. The amounts of the gross sales by Harrisburg of such products to agencies of the United States during the years 1937 and 1938 are $184,807 and $71,436, respectively. The agencies of the United States to which Harrisburg sold such products in such years included the Department of the Navy, the Department of War and the Department of the Interior. The principal products which were sold to such agencies during such years were high pressure gas cylinders, steel flanges and aerial bombs.

5 8. Plaintiff The Eastern Rolling Mill Company (hereinafter sometimes referred to as Eastern) is a corporation incorporated under the laws of the State of Maryland and engaged in the production and sale of certain products of the iron and steel industry. It owns and operates at Colgate, which is in the County of Baltimore in said State and immediately outside the limits of the City of Baltimore, a plant which has an annual capacity of 90,000 tons of hot rolled annealed sheets, including 33,500 tons of galvanized sheets.

At its above-mentioned plant Eastern employs at the present time approximately 500 wage earners, of whom approximately 80 are common laborers. Such common laborers are paid at the rate of 53 cents an hour, which is the base rate of pay of Eastern for common labor. All the other wage earners employed by Eastern at such plant are paid at rates of pay in excess of such base rate of pay for common labor, which rates are generally computed by adding various differentials to such base rate.

Eastern is a party to an agreement with the Steel Workers Organizing Committee and said base rate of pay for common labor of 53 cents an hour is paid in accordance with said agreement.

Eastern has sold iron and steel products to various agencies of the United States over a period of years and desires to continue to bid on contracts of agencies of the United States for such products in the future. The amounts of the gross sales by Eastern of iron and steel products to agencies of the United States during the years 1937 and 1938 are approximately $27,000 and $3,350, respectively. Such sales were principally to the Department of the Navy. The products which were sold to said agency of the United States during such years included black, galvanized and stainless sheets.

9. Plaintiff The Atlantic Wire Company (hereinafter sometimes referred to as Atlantic) is a corporation incorporated under the laws of the State of Connecticut and engaged in the production and sale of plain and galvanized steel wire. It owns and operates at Branford, in the County of New Haven in said State, a wire mill which has an annual capacity of approximately 22,000 tons of plain wire and 500 tons of galvanized wire.

At its above-mentioned plant Atlantic employs at the present time approximately 150 wage earners, of whom approximately 15 are common laborers, paid at the rate of 50½ cents an hour, which is the base rate of pay of Atlantic for common labor. Substantially all the other wage earners employed by Atlantic at such plant are paid at rates of pay in excess of such base rate of pay for common labor, which rates are generally computed by adding various differentials to such base rate.

Atlantic desires to bid on contracts of agencies of the United States for products manufactured by it.

10. None of the plaintiffs is classified in the Iron and Steel Industry as a large, fully integrated company. The plaintiffs are respectively classified in such Industry as either medium-sized or small companies.

11. On information and belief, defendant Frances Perkins is Secretary of Labor and head of the Department of Labor of the United States, an executive department of the United States, and has her official residence as such Secretary, and resides and is found, in the District of Columbia. She is sued herein as defendant individually and in her official capacity as such Secretary.

6 12. On information and belief, defendant Charles V. McLaughlin is the Assistant Secretary of Labor of the United States, and has his official residence as such Assistant Secretary, and resides and is found, in the District of Columbia. He is sued herein as defendant individually and in his official capacity as such Assistant Secretary.

13. On information and belief, defendant L. Metcalfe Walling is Administrator of the Division of Public Contracts of the Department of Labor, and has his official residence as such Administrator, and resides and is found, in the District of Columbia. He is sued herein as defendant individually and in his official capacity as such Administrator.

14. On information and belief, defendant Henry Morgenthau, Jr. is Secretary of the Treasury and head of the Department of the Treasury of the United States, an executive department of the United States, and has his official residence as such Secretary, and resides and is found, in the District of Columbia. He is sued herein as defendant individually and in his official capacity as such Secretary.

On information and belief, all contracts made and entered into by the Department of the Treasury, including the bureaus and administrative units thereof, are made and entered into by or under the authority of defendant Morgenthau; and the invitations and advertisements for such contracts, the specifications for such contracts, the acceptance of bids for such contracts and the execution of such contracts are subject to the general supervision and control of said defendant.

15. On information and belief, defendant Christian Joy Peoples is the Director of Procurement of the Procurement Division of the Department of the Treasury of the United States, and has his official residence as such Director, and resides and is found, in the District of Columbia. He is sued herein individually and in his official capacity as such Director.

16. The Procurement Division of the Department of the Treasury was created by Executive Order No. 6166, dated June 10, 1933, which Order was issued pursuant to the Act of Congress of June 30, 1932, c. 314, §403, 47 Stat. 413, as amended by the Act of Congress of March 3, 1933, c. 212, Title II, §16, 47 Stat. 1518 (United States Code, Supplement IV, Title 5, Section 126). Said Executive Order provides, in substance and among other things, that said Procurement Division shall possess the function of determination of policies and methods of procurement, warehousing and distribution of property, facilities, structures, improvements, machinery, equipment, stores and supplies exercised by any agency of the United States and that when said Division shall have prescribed the manner of procurement, warehousing or distribution of any thing, no such agency shall thereafter procure, warehouse or distribute such thing in any manner other than so prescribed. Pursuant to said Executive Order, the defendant Peoples from time to time issues to the contracting officers of agencies of the United States rules, regulations and orders requiring the inclusion in contracts made by such officers of specified provisions and stipulations.

17. On information and belief, defendant Claude Augustus Swanson is Secretary of the Navy and head of
7 the Department of the Navy of the United States, an executive department of the United States, and has his official residence as such Secretary in, and resides and is

found in, the District of Columbia. He is sued herein as defendant individually and in his official capacity as such Secretary.

On information and belief, all contracts made and entered into by the Department of the Navy, including the bureaus and administrative units thereof, are made and entered into by or under the authority of defendant Swanson; and the invitations and advertisements for bids for such contracts, the specifications for such contracts, the acceptance of bids for such contracts and the execution of such contracts are subject to the general supervision and control of said defendant.

18. Upon information and belief, defendant Harry Hines Woodring is Secretary of War and head of the Department of War of the United States, an executive department of the United States, and has his official residence as such Secretary, and resides and is found, in the District of Columbia. He is sued herein as defendant individually and in his official capacity as such Secretary.

On information and belief, all contracts made and entered into by the Department of War, including the bureaus and administrative units thereof, are made and entered into by or under the authority of defendant Woodring; and the invitations and advertisements for bids for such contracts, the specifications for such contracts, the acceptance of bids for such contracts and the execution of such contracts are subject to the general supervision and control of said defendant.

19. Upon information and belief, defendant Harold L. Ickes is Secretary of the Interior and head of the Department of the Interior of the United States, an executive department of the United States, and has his official residence as such Secretary, and is found, in the District of Columbia. He is sued herein as defendant individually and in his official capacity as such Secretary.

On information and belief, all contracts made and entered into by the Department of the Interior, including the bureaus and administrative units thereof, are made and entered into by or under the authority of defendant Ickes; and the invitations and advertisements for bids for such contracts, the specifications for such contracts, the acceptance of bids for such contracts and the execution of such contracts are subject to the general supervision and control of said defendant.

20. Upon information and belief, defendant James A. Farley is Postmaster General and head of the Post Office Department of the United States, an executive department of the United States, and has his official residence as such Postmaster General, and resides and is found, in the District of Columbia. He is sued herein as defendant individually and in his official capacity as such Postmaster General.

On information and belief, all contracts made and entered into by the Post Office Department, including the bureaus and administrative units thereof, are made and entered into by or under the authority of defendant Farley; and the invitations and advertisements for bids for such contracts, the specifications for such contracts, the acceptance of bids for such contracts and the execution of such contracts are subject to the general supervision and control of said defendant.

8 21. On information and belief, except as otherwise expressly provided by law, all contracts for materials, supplies, articles and equipment made or entered into by any executive department, independent establishment, or other agency of the United States are required by law to be made or entered into, after advertising a sufficient time previously for proposals respecting the same, with the lowest responsible bidder; and except as aforesaid, neither any such executive department, independent establishment or other agency or instrumentality, nor any contracting officer acting on behalf thereof, may lawfully insert in any such contract any stipulation or provision requiring any contractor a party thereto to pay to the persons employed by such contractor in the performance of such contract any particular wages or rate of wages.

22. On information and belief Section 1 of the Public Contracts Act provides, in substance and among other things, that in any contract made and entered into by "any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States" (all the foregoing being collectively referred to in this complaint as agencies of the United States and any one thereof being referred to herein as an agency of the United States), for the manufacture or furnishing of materials, supplies,

rticles and equipment in any amount exceeding $10,000, here shall be included a representation and stipulation:

"(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract:".

23. On information and belief, Section 11 of the Act provides, in substance, that the Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after 90 days after the effective date of the Act: "*Provided, however,* That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor." The Act became effective on June 30, 1936.

24. On information and belief, Section 2 of the Act provides, in substance and among other things, that any breach or violation of any representation or stipulation with respect to minimum wages in any contract, as provided for in Section 1 of the Act, shall render the party responsible therefor liable to the United States for "liquidated damages", in addition to damages for any other breach of such contract, in a sum equal to the amount of any underpayment of wages to any employee engaged in the performance of such contract; that any such sum may be withheld from any amounts due on any such contract or may be recovered in a suit brought in the name of the United States by the Attorney General thereof; and that, in addition, the agency of the United States entering into such contract shall have the right to cancel such contract and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor.

25. On information and belief, Section 3 of the Act provides, in substance, that the Comptroller General is author-

ized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any agreement or representation required by the Act; and that unless the Secretary of Labor otherwise recommends, no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

26. On information and belief, Sections 4 and 5 of the Act provide, in substance and among other things, that the Secretary of Labor is authorized and directed to administer the provisions of the Act; that the Secretary of Labor shall appoint an administrative officer, and such attorneys and experts and other employees as he may from time to time find necessary for the administration of the Act; that the Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of the Act; that the Secretary of Labor or his authorized representatives shall have power to make investigations and findings as provided in the Act; that the "Secretary of Labor, or an impartial representative designated by him", shall, upon his own motion, or as otherwise provided therein, have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath, "and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States and if supported by the preponderance of the evidence shall be conclusive in any court of the United States"; and that the Secretary of Labor or authorized representative "shall have the power, and is * * * authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of" the Act.

27. On information and belief, the defendant Perkins, as Secretary of Labor, purporting to act pursuant to the authority vested in her by Section 4 of the Act, by an Administrative Order dated October 6, 1936, created in the Department of Labor a board known as the Public Contracts Board (hereinafter called the Board) with authority to conduct hearings and to make findings of fact for the

consideration of the Secretary of Labor on the following matters arising under the Act, viz.: Requests for exceptions and exemptions; establishment of special overtime rates; determination of violations of the Act; "establishment of prevailing minimum wages"; and appeals from the rulings of other agencies.

28. On information and belief, the defendant Perkins, as Secretary of Labor, purporting to act pursuant to the authority vested in her by Section 4 of the Act, at some time prior to July 1, 1938, appointed the defendant Walling Administrator of the Division of Public Contracts of the Department of Labor (such administrator being hereinafter referred to as the Administrator). On July 1, 1938, and at all times subsequent thereto mentioned in this complaint, the defendant Walling was the Administrator, and, as such, in charge of the administration of the provisions of the Act, subject to the supervision and control of the defendant Perkins, as Secretary of Labor.

29. Prior to July 11, 1938, the Secretary of Labor had not determined, nor had any proceeding been instituted to determine, the prevailing minimum wages paid to persons employed in the iron and steel industry, or any branch thereof, in any locality in the United States.

30. On information and belief, on or about July 11, 1938, the defendant Walling, as the Administrator, caused to be mailed to various manufacturers of iron and steel products (including the plaintiffs), trade associations, trade unions and others, a notice, dated July 11, 1938, in which it was stated, in substance and among other things, that the Board would hold a hearing on July 25, 1938, to take testimony upon which findings of fact would be made "to assist the Secretary of Labor in determining, pursuant to Section 1(b) of the Public Contracts Act, the prevailing minimum wages in the Iron and Steel Industry" and that at said hearing "an opportunity to be heard, either in person or by duly appointed representatives", would "be given to persons engaged in the above named industry, either as employees or as employers, to groups of such persons, and to others within the discretion of the Board." A copy of said notice is annexed hereto as Exhibit A.

31. On July 25, 1938, and July 26, 1938, the Board held what was described by it as a "hearing" (hereinafter called

the hearing), pursuant to said notice, in a proceeding entitled "In the Matter of Prevailing Minimum Wages in the Iron and Steel Industry". The record in said proceeding is hereinafter called the Record. The Board consisted on said dates and at all times hereinafter mentioned to and including October 27, 1938, of Thomas Holland, Chairman, Robert Nelson Campbell and Oscar R. Strackbein.

32. The hearing was adjourned on July 26, 1938. On information and belief, pursuant to announcement by the Board at the hearing and to subsequent notice by the defendant Walling, as the Administrator, the Record was kept open for the submission by interested parties of additional facts until August 8, 1938, and interested parties were permitted to file briefs on or before August 22, 1938.

33. Plaintiffs Central, Eastern, Harrisburg, Lukens and South Chester, various other manufacturers of iron and steel products, certain trade associations and certain labor organizations, including the Steel Workers Organizing Committee and the Amalgamated Association of Iron, Steel and Tin Workers of North America, appeared at the hearing. Sworn testimony was not taken at the hearing. What was received by the Board as "evidence" (hereinafter sometimes called the evidence) and included in the Record consisted of unsworn statements made at the hearing by various individuals, exhibits, statistical data and other documents offered thereat by representatives of the Department of Labor and other parties, and letters, telegrams, briefs and other documents received by the Board during the hearing or thereafter and prior to August 23, 1938. All the plaintiffs either made statements, through representatives, at the hearing, or filed with the Board written statements and data, which were incorporated in the Record. All plaintiffs filed with the Board a brief which was incorporated in the Record.

34. On or about November 7, 1938, the defendant Walling, as the Administrator, mailed to the plaintiffs and other persons a notice dated November 7, 1938, "To all Persons Interested in the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry", to which was annexed a copy of a press release of the United States Department of Labor, numbered (5603) and headed "For Release Sunday, November 6, 1938". Said notice stated that said press release contained a "Summary

of the Recommendations of the Public Contracts Board in the Matter of the Prevailing Minimum Wages in the Iron and Steel Industry" which was presented to the addressees to whom it was sent in order that they might have full opportunity to register their objection or approval before any decision should be made by the Secretary of Labor. Said notice also stated that briefs might be filed with the Administrator within 21 days of the date thereof, at the end of which period the Board's recommendations, together with the briefs so filed, would be forwarded to the Secretary of Labor.

35. Promptly after receipt of such notice, plaintiffs, directly and by their attorney, requested of the defendant Walling, as the Administrator, a copy of the complete recommendations of the Board in the Matter of the Prevailing Minimum Wages in the Iron and Steel Industry, and also a copy of the full report and a copy of any report made by any member of the Board who did not join in a majority report. Such requests were, in the first instance, denied. Thereafter, and, as plaintiffs are informed and believe, and therefore allege, as a result of the protests of plaintiffs and others similarly situated, copies of the complete Findings of Fact, Conclusions and Recommendations of the Board dated October 27, 1938 (hereinafter called the Report) in said matter were sent to plaintiffs or to their attorney by the defendant Walling, as the Administrator, under date of November 19, 1938. A copy of the Report is annexed hereto as Exhibit B.

36. The Report was made up of a majority report (hereinafter called the Majority Report) signed by Thomas Holland, Chairman, and Robert Nelson Campbell (hereinafter collectively referred to as the Majority of the Board), and a minority report (hereinafter called the Minority Report) signed by Oscar R. Strackbein (hereinafter referred to as the Minority of the Board):

37. After stating certain findings of fact and conclusions, the Majority Report (at p. 136 of Exhibit B) concluded with the following recommendations, among others, to the Secretary of Labor:

"In view of the Findings of Fact made above, the Public Contracts Board respectfully recommends to the Secretary of Labor that the following wages be determined, within the meaning of section 1(b) of the Public Contracts Act, to

be the prevailing minimum wages for the manufacture or furnishing of the products of the Iron and Steel Industry.

"(1) 45 cents an hour within the area made up of
12 the States of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, and Virginia.

"(2) 62.5 cents an hour within the area made up of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Maryland, Delaware, West Virginia, Kentucky, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, Washington, and the District of Columbia.

"The Board recommends further

. . . .

"(2) that subsequent to a determination that the prevailing minimum wages in the Iron and Steel Industry are 45 cents in the South and 62.5 cents in the remainder of the industry, a study, and if necessary, further Findings of Fact be made with respect to the effect of the lower minimum wage on the competition in the industry for Government business;

"(3) that subsequent to a wage determination for the Iron and Steel Industry, a study be made of the position of the smaller companies in the competition for Government business in order that the Board may be placed in a position to advise the Secretary of Labor with respect to requests for exemptions under section 6 of the Act, should the occasion arise;

. . . . ."

38. On information and belief, the Majority of the Board, in the Majority Report, palpably misinterpreted and misconstrued the Act, and particularly Section 1 (b) thereof; proceeded upon a completely erroneous conception of the powers and duties of the Secretary of Labor thereunder; and, consequently, recommended that the defendant Perkins, as Secretary of Labor, take action which said defendant was completely without authority to take.

The Majority of the Board did not even purport to make any finding or recommendation with respect to the deter-

mination of the minimum wages actually prevailing for persons employed in the Iron and Steel Industry in the several "localities" in which the plants of members of such Industry are situated and, in which, therefore, there might be manufactured or furnished products of such Industry pursuant to contracts therefor with agencies of the United States, nor did such Majority purport to make any such finding or recommendation with respect to the minimum wages actually prevailing for persons employed in such "localities" on similar work or in similar industries or groups of industries. Instead, it recommended to the defendant Perkins, as Secretary of Labor, that she determine that the prevailing minimum wages for the manufacture or furnishing of the products of the Iron and Steel Industry were 45 cents an hour within an "area made up of" 12 13 States, including approximately 822,000 square miles of territory, or approximately 25% of the entire United States, and were 62½ cents an hour within an "area made up of" the remaining 36 States of the United States and the District of Columbia.

39. On information and belief, the Minority of the Board, in the Minority Report, also palpably misinterpreted and misconstrued the Act, and particularly Section 1 (b) thereof; proceeded upon a completely erroneous conception of the powers and duties of the Secretary of Labor thereunder; and consequently, also recommended that the defendant Perkins, as Secretary of Labor, take action which said defendant was completely without the authority to take.

Notwithstanding such palpably erroneous construction of the Act, in which the Minority of the Board concurred with the Majority of the Board, however, the Minority disagreed with the Majority in the application of the Act, so construed, to the facts in the Record.

While accepting the facts found by the Majority of the Board, as distinguished from the inferences and conclusions drawn therefrom by the Majority, the Minority Report stated that "the lower base wages generally paid in the region lying east of what is generally known as the Pittsburgh District constitute it, in my opinion, a separate region with respect to the prevailing minimum wages" and that the Board did "not have before it essential information" which would permit the "area" east of Pittsburgh to

be included in the same "region", for purposes of determining prevailing minimum wages, as the "area" west of the "Eastern District". The Minority Report, therefore, recommended that 56½ cents an hour should be determined to be the prevailing minimum wage in the Iron and Steel Industry in "that part of the United States lying east of a line drawn north and south through the most easterly part of Altoona, Pennsylvania, to the northern boundary of the State of Maryland; and the States of Maryland and Delaware, with such exceptions as may be provided for through special exemptions or limitations".

For similar reasons the Minority Report also recommended that the prevailing minimum wage rate of 55 cents an hour "should be applied to the States of Missouri and that part of Kentucky lying west of a line drawn north and south through the westernmost point of Boyd County; to that part of the State of Indiana lying south of a line drawn east and west from the northern boundary of Howard County; and to that part of Illinois lying south of a line drawn east and west from the northern boundary of Fayette County"; and that the prevailing minimum wage rate of 60 cents an hour "should apply in all the states lying west of Minnesota, Iowa, Missouri, Oklahoma, and Texas".

40. On December 5, 1938, D. S. Wolcott, J. H. Parker and John T. Whiting, as a Committee representing small Eastern producers of Iron and Steel products, including the plaintiffs, filed with defendant Walling, as the Administrator, a petition for the reopening of the hearing in the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry. A copy of said petition is annexed hereto as Exhibit C.

In said petition it was pointed out that while the Majority of the Board indicated that chief among its reasons for recommending a uniform minimum wage for the entire North and West of the country were the alleged exis-
14 tence of general competition among the plants situated in that geographic expanse of territory and the belief that "the requirements of the Government for a wage standard and the economic characteristics of the industry's markets require that a broad view of the entire wage structure of the industry in the North and West be taken, rather than a particular view of numerous local wage levels" (see

Exhibit B, p. 124), wherefore economic, as distinguished from geographical, factors must constitute the primary basis for the determination of the area in which prevailing minimum wages should be determined, the Majority Report itself recognized that there was insufficient evidence in the record to justify a determination of prevailing minimum wages on such erroneous basis by also recommending that, subsequent to the wage determination recommended, a study be made of the position of the smaller companies in the competition for Government business (see Exhibit C, pp. 4-12).

Said petition further urged, for similar reasons, that the further study of the effect of the lower rate in the South on competition in the industry must be made before any prevailing minimum determination was promulgated (see Exhibit C, pp. 13-16) and that the Board had failed to obtain adequate evidence with regard to, and to consider the effect of the proposed minimum wage determination upon, the wage rates in other industries and the general economic dislocation, particularly in the eastern United States, that would result from such proposed minimum wage determination (see Exhibit C, pp. 16-19).

On or about December 10, 1938, said petition was denied by the defendant Walling, as the Administrator.

41. As a result (as plaintiffs are informed and believe, and therefore allege) of the protests of plaintiffs and others similarly situated against the denial of the right of oral argument before the Secretary of Labor with respect to the Report, the recommendations contained therein and the proposed determination of prevailing minimum wages in the iron and steel industry, the defendant Walling, as the Administrator, on or about December 10, 1938, issued a notice, wherein it was stated that oral arguments would be held on December 20, 1938, to assist on the evidence of record and the recommendations of the Board in the determination of the prevailing minimum wages in the Iron and Steel Industry, that argument must be limited to evidence of record and that briefs might be filed until December 19, 1938.

42. On December 19, 1938, D. S. Wolcott, J. H. Parker and John T. Whiting, as a committee representing small Eastern producers of iron and steel products, including the

plaintiffs, filed with the defendant Walling, as the Administrator, the Exceptions of such small Eastern producers to the Report and a brief in support of said Exceptions. A copy of said Exceptions is annexed hereto as Exhibit D, and the exceptions set forth therein are renewed and realleged herein as if set forth herein at length.

43. On December 20 and 21, 1938, oral arguments In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry were had before the defendant McLaughlin, who, at the commencement of such oral arguments, stated, in substance, that he was hearing such arguments as Assistant Secretary of Labor with power to act for and in the stead of the Secretary of Labor. Counsel for the plaintiffs appeared at said oral argument and argued on their behalf.

15 44. On or about January 16, 1939, the defendant McLaughlin, purporting to act pursuant to Section 1(b) of the Act, issued a statement in writing dated January 16, 1939, signed by him as Acting Secretary of Labor and entitled "In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry" (said statement being hereinafter sometimes referred to as the Determination), wherein, among other things, he purported to define the Iron and Steel Industry and to determine the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the Iron and Steel Industry in six so-called "localities" which, in the aggregate, constituted the entire United States. A copy of the Determination is annexed hereto as Exhibit E.

The following statements appear at pages 17 to 19, inclusive, of the Determination:

"Upon all the evidence submitted in this matter, including the briefs filed and the oral arguments,

I Hereby Determine

(1) That the iron and steel industry is defined to mean and include the business of producing and selling all or any one or more of the following products:

Axels—rolled or forged
Bale ties—single loop
Bars—alloy steel, hot rolled

Bars—cold finished, carbon and alloy
Bars—concrete reinforcing, straight lengths
Bars, ingots, blooms and billets—iron
Bars—merchant steel
Bars—tool steel
Ferro—manganese and spiegeleisen
Girder rails and splice bars therefor
Ingots, blooms, billets and slabs—alloy
Ingots, blooms, billets and slabs—carbon
Light rails—60 pounds or less per yard—and splice bars and angle bars therefor
Standard tee rails of more than 60 pounds per yard—and angle bars and rail joints therefor, or any of such products
Mechanical tubing
Pig iron—foundry, high silicon silvery, malleable, open hearth basic, Bessemer and high silicon Bessemer
Pig iron—low phosphorus
Pipe—standard, line pipe and oil country tubular products
Plates
Posts—fence and sign
Railroad tie plates
Railroad track spikes
Sheet bars
Sheets
Skelp
Steel sheet piling
Strip steel—cold rolled
Strip steel—hot rolled
Structural shapes
16 Tubes—boiler
Tube rounds
Wheels—car, rolled steel
Wire—drawn
Wire hoops—twisted or welded
Wire nails and staples, twisted barbless wire, barbed wire, twisted wire fence stays and wire fencing (except chain-link fencing)
Wire rods
Wire—spring
Wire—telephone

(2) That the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the Iron and Steel Industry are the amounts indicated for each of the following localities whether arrived at on a time or piece work basis:

1. 45 cents per hour in the locality consisting of the states of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, Virginia and West Virginia (except the counties of Hancock, Brooke, Ohio, Harrison, Monongalia, and Marshall);

2. 60 cents per hour in the locality consisting of the states of Washington, Oregon and California;

3. 60 cents per hour in the locality consisting of the states of Montana, Idaho, Nevada, Wyoming, New Mexico, Utah, Colorado and Arizona;

4. 58½ cents per hour in the locality consisting of the states of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri and the area in and about East Saint Louis, Illinois;

5. 62½ cents per hour in the locality consisting of the States of Wisconsin, Illinois, (except the area in and about East Saint Louis, Illinois), Michigan, and Indiana;

6. 62½ cents per hour in the locality consisting of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, and that portion of the State of West Virginia comprised within the counties of Hancock, Brooke, Ohio, Marshall, Harrison, and Monongalia, and the District of Columbia;

provided that apprentices may be employed at lower rates if their employment conforms to the standards of the Federal Committee on Apprenticeship.

"This determination shall be effective and the minimum wages hereby established for the respective localities shall apply to all contracts awarded subject to Public Act No. 846, 74th Congress, on or after January 31, 1939."

45. On information and belief, the defendant Perkins authorized, approved, consented to and actively participated in the Determination.

17 46. On or about January 20, 1939, plaintiffs, by their attorney, duly requested that the defendant

Perkins, as Secretary of Labor, postpone the effective date of the Determination for approximately 60 days until April 3, 1939.

47. On or about January 30, 1939, the defendant McLaughlin, by an instrument in writing dated January 30, 1939, signed by him as Acting Secretary of Labor and entitled "Postponement of Effective Date of Secretary of Labor's Decision in the Iron and Steel Industry", a copy of which is annexed hereto as Exhibit F, postponed the effective date of his "decision" In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry until March 1, 1939.

48. On or about February 17, 1939, plaintiffs, by their attorney, in a communication directed to the defendant Perkins, as Secretary of Labor, duly renewed their original request that the effective date of the Determination be postponed until at least April 3, 1939. The defendant Perkins, as Secretary of Labor, has not granted such request and she and the defendant McLaughlin are threatening to make the Determination effective on March 1, 1939.

49. On information and belief, the Determination is void and wholly beyond the authority of the defendant Perkins, as Secretary of Labor, and the defendant McLaughlin, as Acting Secretary of Labor.

50. On information and belief, the defendant McLaughlin, as appears from the Determination, committed a plain error of law in interpreting the Act, and particularly Section 1(b) thereof; proceeded in the Determination upon a completely erroneous conception of the powers and duties of the Secretary of Labor thereunder; and, consequently, in purporting therein to determine the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the Iron and Steel Industry in the six so-called "localities" set forth in the Determination, acted arbitrarily and capriciously and wholly without warrant or authority in law.

As appears from the Determination (see Exhibit E, page 4) the principal question which the defendant McLaughlin purported to decide in the Determination, and that which underlay all other questions which he purported to decide therein (other than the definition of the Iron and Steel Industry), was a question of law, viz., "the construction to be

placed upon the language of Section 1(b) of the Public Contracts Act" and, particularly, the proper construction of the word "locality" as employed therein. While conceding in the Determination (see Exhibit E, pages 9 and 10) that the "word 'locality' used in the statute carries obvious geographic connotations", the defendant McLaughlin concluded that "other factors than geography must be used to assist the determination" and that "Undoubtedly the Board was correct in considering the economic facts of the industry itself to assist it to a conclusion." In substance, the interpretation placed upon the Act was that the Secretary of Labor was vested with a discretion in the light of economic factors to determine, in the case of each industry, that any geographic area, however large, is embraced within the term "locality".

18 The plaintiffs are informed and believe, and, therefore, aver, that the term "locality", as employed in Section 1(b) of the Act, means the city, county, village or other civil subdivision of a State in which work under a particular Government contract is to be performed, or the immediate vicinity of that place, or, at most, a small geographical area; that the authority in respect of determination of prevailing minimum wages conferred by the Act upon the Secretary of Labor is limited to the ascertainment of minimum wages actually and currently prevailing for persons employed on similar work or in the particular or similar industries or groups of industries in the locality (as above defined) in which the work under the particular Government contract is to be performed; and that the conclusion reached in the Determination that the States of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine, and that portion of the State of West Virginia within the Counties of Hancock, Brooke, Ohio, Marshall, Harrison and Monongalia, and the District of Columbia, comprise a "locality" within the meaning of Section 1(b) of the Act, extends the meaning of that term beyond any permissible limits of construction and is wholly arbitrary and capricious and without warrant in law.

The plaintiffs are further informed and believe, and, therefore, aver, that if the term "locality" as used in Sec-

tion 1(b) of the Act were to be construed in the manner in which it was interpreted in the Determination, grave questions as to whether the Act, and particularly Section 1(b) thereof, is invalid as improperly delegating legislative authority, would be presented, since, under such construction, as pointed out in the Determination (see Exhibit E, page 10), "the language of the statute does not itself suggest answers to the questions which it raises."

51. For the purposes of the Determination, the defendant McLaughlin treated the common labor base rates of the various members of the industry which had submitted wage data as the minimum wages paid by such members.

62½ cents per hour was not at the date of the wage data set forth in the Record and the Report or at the date of the Determination or at any time subsequent thereto, and is not now, the prevailing common labor base rate, or the prevailing minimum wage, in the Iron and Steel Industry, in the localities, or any of them, in which any of the plants of the plaintiffs are located, but, as shown herein and as appears from the findings of fact in the Report, such prevailing common labor base rates, and prevailing minimum wages, were at all such times and are now substantially lower than 62½ cents per hour.

Plaintiffs are informed and believe, and therefore aver, that, as appears from the face of the Determination and the Report setting forth the wage data on which the Determination was based, the Determination constitutes an attempt on the part of the defendants Perkins and McLaughlin, purporting to act in their respective official capacities above set forth and under the guise and pretense of determining the minimum wages actually prevailing in the respective localities in which the plants of plaintiffs and other manufacturers of products of the Iron and Steel Industry are located, but, in fact, acting completely beyond any authority conferred upon them by law, to raise and fix the wage rates to be paid at such plants.

19 52. Plaintiffs are informed and believe, and, therefore, aver, that even if, as erroneously concluded by the defendant McLaughlin in the Determination, the Act conferred authority upon the Secretary of Labor, in determining prevailing minimum wages in the Iron and Steel Industry, to consider and give weight to relevant economic

factors in determining the size of areas within which prevailing minimum wages should be determined, the conclusion reached in the Determination that the States of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine and that portion of the State of West Virginia comprised within the Counties of Hancock, Brooke, Ohio, Marshall, Harrison and Monongalia and the District of Columbia comprise a single "locality" is wholly arbitrary and capricious and without warrant in law for the following reasons, among others:

(a) The only so-called economic factor which is referred to in the Determination in that regard is the alleged fact that a single market area is predominantly served by the plants in the Iron and Steel Industry located in the above-mentioned area. On information and belief, such alleged fact (the existence of which plaintiffs deny) was wholly irrelevant to the determination of prevailing minimum wages in a locality in which iron and steel products are manufactured; and in giving controlling significance thereto the defendant McLaughlin completely misconstrued the Act and, in effect, converted it into one authorizing the fixing of wages that are to prevail for persons employed in a region in which materials and supplies or articles of equipment are sold;

(b) The defendant McLaughlin in the Determination completely and erroneously ignored the facts set forth in the Report and the Record which showed the existence of well-defined and long-established wage differentials existing among various districts in the so-called "locality" above mentioned. Such evidence showed conclusively that there are in the Iron and Steel Industry well recognized and long-existing wage differentials between the plants in the industry which are located in the Western portion (hereinafter sometimes called the Western District) of the so-called "locality" referred to in subparagraph (a) above and those plants which were included by said defendant in said "locality" but which are also located in what are known in the industry as the "Eastern District", the "Buffalo District" and the "Johnstown District". The areas, substantially as recognized for minimum wage purposes by the Code of Fair Competition for the Iron and

Steel Industry, as amended May 30, 1934, covered by the Eastern District, the Buffalo District and the Johnstown District, are as follows:

(i) The Eastern District comprises the New England States and the States of Delaware, New Jersey and Maryland; that part of the States of New York and Pennsylvania lying east of a line drawn north and south through the most easterly point of Altoona, Pennsylvania; and that part of the State of West Virginia lying south of a line drawn west in extension of the southerly boundary of the State of Pennsylvania.

(ii) The Buffalo District comprises that part of the State of New York lying west of the westerly boundary of the Eastern District, and the Counties of Erie, Crawford and Warren in the State of Pennsylvania.

(iii) The Johnstown District comprises the County of Cambria and the City of Altoona, Pennsylvania.

The plants of all the plaintiffs are located in such Eastern District. There are attached hereto as Exhibit G tables compiled from the table set forth on pages 12 to 23, inclusive, of the Report, showing for each of such three Districts, and for the Western District, the base rates for common labor that were being paid in July, 1938, at the plants of the Iron and Steel Industry located therein concerning which wage data are set forth in the Report, the location of such plants, the total number of wage earners then employed at such plants and the total number of common laborers at such plants who were then receiving the base rate for common labor. The following table shows in summary form the information contained in such first-mentioned tables:

	No. of Plants	No. of Wage Earners	No. of Common Laborers
Eastern District—Base Rates			
Under 56½¢	32	8,522	1,355
Exactly 56½¢	18	38,069	3,854
Over 56½¢ but under 62½¢	7	4,200	217
Exactly 62½¢	3	3,602	115
Over 62½¢	—	—	—
	60	54,393	5,541

	No. of Plants	No. of Wage Earners	No. of Common Laborers
Buffalo District—Base Rates			
Under 56½¢	4	1,412	171
Exactly 56½¢	—	—	—
Over 56½¢ but under 62½¢	5	9,467	811
Exactly 62½¢	—	—	—
Over 62½¢	—	—	—
	9	10,879	982
Johnstown District—Base Rates			
Under 56½¢	—	—	—
Exactly 56½¢	—	—	—
Over 56½¢ but under 62½¢	2	8,886	603
Exactly 62½¢	—	—	—
Over 62½¢	—	—	—
	2	8,886	603
Western District—Base Rates			
Under 56½¢	6	4,909	817
Exactly 56½¢	1	53	23
Over 56½¢ but under 62½¢	3	973	39
Exactly 62½¢	91	149,319	10,561
Over 62½¢	1	501	43
	102	155,755	11,483
Total of Such Districts—Base Rates			
Under 56½¢	42	14,843	2,343
Exactly 56½¢	19	38,122	3,877
Over 56½¢ but under 62½¢	17	23,526	1,670
Exactly 62½¢	94	152,921	10,676
Over 62½¢	1	501	43
	173	229,913	18,609

21 From such tables it clearly appears that the prevailing minimum wage for common labor at the plants of the Iron and Steel Industry located in the above-mentioned Eastern District is not more than 56½ cents and is probably a lesser amount; in the above-mentioned Buffalo District is not more than 59½ cents an hour; and in the above-mentioned Johnstown District is not more than 58½ cents an hour.

53. The plaintiffs are informed and believe, and, therefore, aver, that there is no evidence in the Record to support the purported determination made in the Determination that the area embraced within the States of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine, and that portion of the State of West Virginia comprised within the Counties of Hancock, Brooke, Ohio, Marshall, Harrison and Monongalia, and the District of Columbia, constitutes a "locality" for the pur-

pose of determining prevailing minimum wages under Section 1(b) of the Act, for persons employed therein in the manufacture or furnishing of the products of the Iron and Steel Industry, and that, therefore, said purported determination is wholly arbitrary and capricious and without warrant in law.

54. The plaintiffs are informed and believe, and, therefore, aver, that the purported determination referred to in the preceding paragraph 53 hereof is not supported by the preponderance of the evidence in the Record, and is, therefore, without warrant in law.

55. The plaintiffs are informed and believe, and, therefore, aver, that the purported determination referred to in the foregoing paragraph 46 hereof is arbitrary and capricious and without warrant in law for the reason that it was made by the defendant McLaughlin without there having been accorded to the plaintiffs the fair hearing which the Secretary of Labor was required by the Act, and particularly Section 5 thereof, to give to the plaintiffs prior to the making of any determination of the prevailing minimum wages in the Iron and Steel Industry in the respective localities in which the plants of the plaintiffs are located, in that:

(a) in making said purported determination, the defendant McLaughlin took into consideration, and based said proposed determination in whole or in part upon, facts and matter which were not contained in the Record and which were not properly before him for consideration. The only document (other than the Report) referred to in the Determination was a report allegedly made to an Annual Meeting of Stockholders of United States Steel Corporation (see Exhibit E, page 8), and there was not any such report contained in the Record;

(b) the defendant Walling denied the above-mentioned petition by the Committee representing small Eastern producers of iron and steel products, including the plaintiffs, for the reopening of the hearing In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry, and by such denial the plaintiffs were prevented from presenting for consideration, prior to the making of any such determination, information and matter which, on the basis of the construction of the Act

adopted by the Board and the defendant McLaughlin (and disputed by the plaintiffs), were material and relevant; and

(c) the defendant McLaughlin, in making the De-
22 termination, was not impartial, as required by the Act, but was, in fact, arbitrary and capricious.

56. The defendant Perkins, purporting to act as Secretary of Labor, the defendant McLaughlin, purporting to act as Assistant and Acting Secretary of Labor, and the defendant Walling, purporting to act as the Administrator, have been and are threatening to require that there be included in every contract made and entered into after March 1, 1939, by any agency of the United States, for the manufacture or furnishing of products of the Iron and Steel Industry (as that Industry is defined in the Determination), in any amount exceeding $10,000, a stipulation or representation that any person employed by the contractor in the manufacture or furnishing of any of such products used in the performance of the contract will be paid, without subsequent deduction or repayment on any account, not less than the minimum wages set forth in the Determination, or a stipulation or representation of like purport and effect; and the defendant Peoples, acting pursuant to the direction and instruction of the defendants Perkins, McLaughlin and Walling, and purporting to act as Director of Procurement, has directed and threatens to continue to direct every agency of the United States desiring to enter into any such contract after March 1, 1939, to include such a stipulation in such contract and the invitations to bid therefor.

57. Article 1 of Regulations No. 504 prescribed by the Secretary of Labor under the Act (Series A) provides, in part, as follows:

"ARTICLE 1. (Insertion of Stipulations.)—Except as hereinafter directed, in every contract made and entered into by an executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment, with respect to which invitations for bids are issued on or after September 28, 1936, the contracting officer shall cause to be in-

serted in such invitation or the specifications and in such contract, the following stipulations:

"Representations and stipulations pursuant to Public Act No. 846, Seventy-fourth Congress:

* * * * * *

"(b) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however,* That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor."

23. On information and belief, the Act does not authorize the Secretary of Labor to adopt any regulation requiring the insertion in any contract of any provision with respect to minimum wages in any industry unless and until the Secretary of Labor has made a valid determination with respect to minimum wages in such industry.

Article 1101 of such Regulations provides as follows:

"ART. 1101. (Minimum Wages).—Until a determination of the prevailing minimum wage for a particular industry or group of industries has been made by the Secretary of Labor prior to the invitation for bids, the stipulation with respect to wages in section 1 (b) of the Act will be inoperative, as provided in article 1 (b) of these Regulations.

"Determinations of prevailing minimum wages or changes therein will be published in the Federal Register and sent to contracting officers through circular letters of the Procurement Division, of the Treasury. Such determinations will be effective upon the dates fixed therein."

58. On information and belief, there have been issued by or under the authority of the defendant Swanson, as Secretary of the Navy, invitations to bid on contracts to be made by or under the authority of said defendant for the

purchase of products of the Iron and Steel Industry, as defined in the Determination, which invitations to bid will be opened by agents or representatives of said defendant on or about March 2, 1939, with a view to awarding contracts thereon, as follows:

Schedule No.	Product covered thereby	Approximate tons of product	Date for opening of Bid
5680	Shapes	777	Mar. 2, 1939
5681	Plates, Sheets and Strip	7375	Mar. 2, 1939
5682	Bars and Strip	209	Mar. 2, 1939
900-2380	Special Steel angles and shapes	1505	Mar. 9, 1939
900-2381	Special Steel I-Beams	300	Mar. 9, 1939

In each of such invitations to bid the attention of the bidders is invited to the Determination, and there is set out in full that portion of the Determination which listed the various "localities" covered thereby and their respective prevailing minimum wage rates. Each of such invitations to bid contains the following statement, referring to the Determination:

"The determination shall be effective and the minimum wages hereby established for the respective localities shall apply to all *contracts awarded* subject to Public Act No. 846, 74th Congress, *on or after March 1, 1939.*" (Italics in original; underscoring supplied.)

Plaintiffs Lukens, Alan Wood and Central desire to submit bids on the above Schedule 5681, and some or all of the plaintiffs desire to bid on some or all of the other schedules above set forth.

59. On information and belief, the last quoted paragraph was inserted in such bids at the instance of the defendants Perkins, McLaughlin, Walling and Peoples. Notwithstanding the provisions of Article 1101 of the Regulations above referred to, the defendants Perkins, McLaughlin and Walling have arbitrarily and capriciously and contrary
24 to the provisions of such Article and to the provisions of Section 11 of the Act, specifically ruled that every contract made and entered into after March 1, 1939, pursuant to invitations for bids issued prior to said date, by any agency of the United States for the manufacture or furnishing of products of the Iron and Steel Industry (as that industry is defined in the Determination) in any amount exceeding $10,000 must contain a stipulation or representation that any person employed by the contractor

in the manufacture or furnishing of any of such products used in the performance of the contract, will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages set forth in the Determination, or a stipulation or representation of like purport and effect.

On information and belief, the defendants Morgenthau, Swanson, Woodring, Ickes and Farley, purporting to act in their respective official capacities above set forth, and their subordinates, intend to, and will, unless the injunctive relief prayed herein is granted, require the insertion of such a representation or stipulation in every such contract awarded on and after March 1, 1939, even though the invitations for bids thereon were issued prior to said date, and require the insertion in every invitation issued on and after March 1, 1939, to bid on any such contract, and in every advertisement so made for bids on any such contract, and in the specifications so issued for any such contract, and in every bid on any such contract, and in every required form for any such bid, and in every such contract, such a stipulation or representation, or a stipulation of like purport or effect.

60. Appropriations which are among the largest, if not the largest in the nation's history for the purchase by the Department of the Navy, the War Department, the Department of the Treasury, the Department of the Interior and the Post Office Department of products of the Iron and Steel Industry (as defined in the Determination) have been made within the past year and, on information and belief, will be made within the immediate future. Large sums out of the appropriations heretofore made for such purchases have not yet been expended. On information and belief, invitations to bid on numerous large and important contracts for the purposes hereinabove referred to will be issued, and such contracts will be awarded, within the immediate future.

Plaintiffs are desirous of bidding on such contracts.

61. Unless a temporary restraining order as prayed in paragraph 1 of the prayer for relief herein be granted forthwith, to-wit, a temporary restraining order which shall in substance, restrain and enjoin the defendants Perkins, McLaughlin and Walling, individually and in their respec-

tive official capacities above set forth, from causing or permitting the Determination to become effective, and restraining and enjoining the other defendants named herein, individually and in their respective official capacities above set forth, from giving effect to the Determination in the bidding upon, and award of, public contracts, and from complying with Article 1(b) of Regulations No. 504 prescribed by the Secretary of Labor under the Act (Series A) set forth in paragraph 57 hereof, and unless a preliminary injunction *pendente lite* is granted as prayed in paragraph 3 of the prayer for relief, and unless, upon final hearing, a permanent injunction is granted as prayed in paragraph 4 of the prayer for relief, the plaintiffs will suffer immediate and irreparable injury, for which they have no
25 adequate remedy at law, for the following reasons, among others:

(i) The plaintiffs will be deprived of their lawful right to bid on contracts for the manufacture or furnishing to any agency of the United States, including the executive departments of which the heads thereof are defendants named herein, of any of the products of the Iron and Steel Industry (as defined in the Determination), free of limitations other than those imposed by Congress, and will be precluded from selling to any such agency any of such products, unless the plaintiffs shall agree, in each contract for the sale to any such agency of any such products in an amount in excess of $10,000, to pay the persons employed in the performance of such contract at the rate of wages specified in the Determination. The plaintiffs will be deprived of such right, and will be required so to agree, not by any statute of the United States or by any action lawfully taken thereunder by any officer or agent of the United States, but by reason of arbitrary and capricious acts of the defendants in excess of and without warrant of, but under color of, authority conferred upon them by law.

(ii) As heretofore shown herein, the bids on substantial contracts to be awarded by or under the authority of the defendant Swanson, on which contracts or parts thereof certain plaintiffs heretofore named desire to submit bids, are to be opened on or shortly after March 1, 1939. As also heretofore shown herein, numerous other valuable and important contracts will be let by or under the authority of

defendants named herein within a relatively short time after March 1, 1939. If the plaintiffs should submit bids upon any such contract, and enter into any such contracts, which include stipulations or representations in terms or to the effect that the plaintiffs will pay to persons employed by the plaintiffs in the performance of such contracts the minimum wages set forth in the Determination, the plaintiffs would be in danger of being estopped, and counsel for the plaintiffs have advised the plaintiffs that a court might hold that they were estopped, to secure a judicial determination of the invalidity of the Determination. Moreover, the penalties provided in Sections 2 and 3 of the Act for non-compliance with any such stipulation or representation would impose upon the plaintiffs the burden of obtaining a judicial decision of the question of the validity of the Determination only upon the condition that, if unsuccessful, the plaintiffs must pay excessive penalties, have their contracts subject to cancellation, and be precluded from obtaining the award of any public contract for three years, unless the Secretary of Labor otherwise recommends. Such penalties are so severe as in effect to close all approaches to the courts and deprive the plaintiffs of any adequate remedy at law in the premises.

(iii) As has heretofore been shown, the rates of pay for wage earners employed by the plaintiffs at other than common labor base rates of the respective plaintiffs for common labor are generally ascertained by adding various differentials to such common labor base rates, respectively, and an increase in such common labor base rates will, as a practical matter, necessarily result in an increase in the rates of pay for such other persons. Furthermore, it will be impracticable, in the case of any of the plaintiffs who enter into contracts with an agency of the United States requiring an increase in the base rate of pay for persons employed in a particular plant by such plaintiff in the performance of such contract, to fail correspondingly to increase the base rate of pay for other wage earners employed by such plaintiff on other matters in such plant.

26

(iv) If the plaintiffs are required to pay the minimum wages fixed in the Determination, there is grave danger that they will no longer be able successfully to compete for

Government contracts since large, fully integrated companies enjoying more favorable geographic locations from the standpoint of proximity to sources of supply for the raw materials used by them, proximity to the markets for their products and freight rate differentials should be able to underbid plaintiffs, if the plaintiffs must pay the same minimum wages as such competitors are now paying. On the other hand, if plaintiffs do not agree to pay such minimum wages, they will be in grave danger of losing a substantial source of revenue.

(v) The plaintiffs have been advised by counsel, and therefore believe and allege, that there does not exist any timely, plain, adequate or complete remedy at law for the protection of their lawful rights as herein set forth and the prevention of the irreparable and irrecoverable damages thereto which will occur if the Determination is permitted to become effective.

62. The plaintiffs are advised by counsel, and therefore believe and allege, that they are entitled to receive from this Court a declaratory judgment declaring their rights in the premises.

WHEREFORE, the plaintiffs pray:

1. That a temporary restraining order be granted forthwith

(a) restraining and enjoining the defendants Frances Perkins, Charles V. McLaughlin and L. Metcalfe Walling, and each of them, individually and in their respective official capacities above set forth, their and each of their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and their successors in office, and each of them, and their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them, from causing or permitting to become effective, and from promulgating, publishing or holding out, or causing or permitting to be promulgated, published or held out, as effective or valid or authorized by law, the purported determination of prevailing minimum wages in the Iron and Steel Industry issued under date of January 16, 1939, by the defendant Charles V. McLaughlin, as Acting Secretary of Labor; and

(b) restraining and enjoining the defendants Henry Morgenthau, Jr., Christian Joy Peoples, Claude Augustus Swanson, Harry Hines Woodring, Harold L. Ickes and James A. Farley, and each of them, individually and in their respective official capacities above set forth, their and each of their officers, agents, assistants, employ-
27 ees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and their successors in office, and each of them, and their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them, from (i) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract, or in any advertisement for bids on any such contract, or in the specifications for any such contract, or in any bid on any such contract, or in any required form for any such bid, or in any such contract, any stipulation or representation that any person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contract will be paid, without subsequent deduction or repayment on any account, or otherwise, not less than the minimum wages set forth in the purported determination of prevailing minimum wages in the Iron and Steel Industry issued under date of January 16, 1939, by the defendant Charles V. McLaughlin, as Acting Secretary of Labor, or any stipulation or representation of like purport or effect, and (ii) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract for the manufacture or furnishing of any iron or steel product or any product of the Iron and Steel Industry (as defined in said purported determination), or in any advertisement for bids on any such contract, or in the specifications for any such contract, or in any bid on any such contract, or in any required form for any such bid, or in any such contract, the following stipulation or representation:

"All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any

account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however*, That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor."

or any stipulation or representation of like purport or effect.

2. That this Honorable Court issue its order, directed to the defendants, and each of them, to show cause, if any they have, at a convenient day to be fixed by this Honorable Court, why a preliminary injunction should not be granted restraining all and each of the defendants during the pendency of this action, pursuant to the prayers of this complaint and particularly paragraph 3 thereof.

3. That this Honorable Court grant and issue a preliminary injunction

(a) restraining and enjoining, pending final determination of this cause, the defendants Frances Perkins, Charles V. McLaughlin and L. Metcalfe Walling, and each
28 of them, individually and in their respective official capacities above set forth, their and each of their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and their successors in office, and each of them, and their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them, from causing or permitting to become effective, and from promulgating, publishing or holding out, or causing or permitting to be promulgated, published or held out, as effective or valid or authorized by law, the purported determination of prevailing minimum wages in the Iron and Steel Industry issued under date of January 16, 1939, by the defendant Charles V. McLaughlin, as Acting Secretary of Labor; and

(b) restraining and enjoining, pending final determination of this cause, the defendants Henry Morgenthau, Jr., Christian Joy Peoples, Claude Augustus Swanson, Harry Hines Woodring, Harold L. Ickes and James A. Farley, and each of them, individually and in their respective official capacities above set forth, their and each of their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them; and their successors in office, and each of them, and their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them, from (i) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract, or in any advertisement for bids on any such contract, or in the specifications for any such contract, or in any bid on any such contract, or in any required form for any such bid, or in any such contract, any stipulation or representation that any person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contract will be paid, without subsequent deduction or repayment on any account, or otherwise, not less than the minimum wages set forth in the purported determination of prevailing minimum wages in the Iron and Steel Industry issued under date of January 16, 1939, by the defendant Charles V. McLaughlin, purporting to act as Acting Secretary of Labor, or any stipulation of like purport or effect, and (ii) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract for the manufacture or furnishing of any iron or steel product or any product of the Iron and Steel Industry (as defined in said purported determination), or in any advertisement for bids on any such contract, or in the specifications for any such contract; or in any bid on any such contract, or in any required form for any such bid, or in any such contract, the following stipulation or representation:

"All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any

29 account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however,* That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor."

or any stipulation or representation of like purport or effect.

4. That upon final hearing of this cause this Honorable Court grant, decree and issue a permanent injunction

(a) restraining and enjoining the defendants Frances Perkins, Charles V. McLaughlin and L. Metcalfe Walling, and each of them, individually and in their respective official capacities above set forth, their and each of their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and their successors in office, and each of them, and their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them, from causing or permitting to become effective, and from promulgating, publishing or holding out, or causing or permitting to be promulgated, published or held out, as effective or valid or authorized by law, the purported determination of prevailing minimum wages in the Iron and Steel Industry issued under date of January 16, 1939, by the defendant Charles V. McLaughlin, as Acting Secretary of Labor; and

(b) ordering, commanding and directing the defendants Frances Perkins and Charles V. McLaughlin, and each of them, individually and in their respective official capacities above set forth, to withdraw, cancel and void the purported determination of prevailing minimum wages in the Iron and Steel Industry issued under date of January 16, 1939, by the defendant Charles V. McLaughlin, as Acting Secretary of Labor; and

(c) restraining and enjoining the defendants Henry Morgenthau, Jr., Christian Joy Peoples, Claude Augustus Swanson, Harry Hines Woodring, Harold L. Ickes and James A. Farley, and each of them, individually and in their respective official capacities above set forth, their and each of their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and their successors in office, and each of them, and their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them, from (i) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract, or in any advertisement for bids on any such contract, or in the specifications for any such contract, or in any bid on any such contract, or in any required form for any such bid, or in any such contract, any stipulation or representation that any person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contract will be paid, without subsequent deduction or repayment on any account, or otherwise, not less than the minimum wages set forth in the purported determination of prevailing minimum wages in the Iron and Steel Industry issued under date of January 16, 1939, by the defendant Charles V. McLaughlin, purporting to act as Acting Secretary of Labor; or any stipulation of like purport or effect, and (ii) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract for the manufacture or furnishing of any iron or steel product or any product of the Iron and Steel Industry (as defined in said purported determination), or in any advertisement for bids on any such contract, or in the specifications for any such contract, or in any bid on any such contract, or in any required form for any such bid, or in any such contract, the following stipulation or representation:

"All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any ac-

count, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract: *Provided, however,* That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor."

or any stipulation or representation of like purport or effect.

5. That upon final hearing, this Honorable Court declare, and order, adjudge and decree, that the purported determination of prevailing minimum wages in the Iron and Steel Industry issued under date of January 16, 1939, by the defendant Charles V. McLaughlin, as Acting Secretary of Labor, is invalid and unauthorized in law.

31 6. That the plaintiffs may have such other and further relief in the premises as this Honorable Court shall deem just and proper.

O. MAX GARDNER,
Office & P. O. Address,
Woodward Building,
Washington, D. C.,
ROBERTS B. THOMAS,
Office & P. O. Address,
101 Park Avenue,
New York, N. Y.,
GARDNER, MORRISON & ROGERS,
Office & P. O. Address,
Woodward Building,
Washington, D. C.,
WEBSTER & GARSIDE,
Office & P. O. Address,
15 Broad Street,
New York, N. Y.,
HAUSE, EVANS, STOREY & LICK,
Office & P. O. Address,
Telegraph Building,
Harrisburg, Pa.,

COCK & MARKELL,
Office & P. O. Address,
First National Bank Building,
Baltimore, Maryland,
GEORGE WALTER WITNEY,
Office & P. O. Address,
Finance Building,
Philadelphia, Pa.,
Attorneys for Plaintiffs.

32 DISTRICT OF COLUMBIA—*ss.:*

Roberts B. Thomas, being first duly sworn, according to law, upon oath deposes and says:

I am a citizen of the United States, over 21 years of age, and a resident of the County of Nassau, State of New York, and am an attorney duly admitted to practice in all the courts of the State of New York, the Supreme Court of the United States and the United States Court of Appeals for the District of Columbia. I am attorney for the plaintiffs named in the foregoing complaint. All said plaintiffs are corporations and are absent from the District of Columbia. I have read the foregoing complaint and verily believe the facts stated therein to be true.

ROBERTS B. THOMAS

Subscribed and sworn to before me this 25th day of February, 1939.

J. ARTHUR LYNHAM
(Seal) *Notary Public, D. C.*

33 *Exhibit A.*

DEPARTMENT OF LABOR
DIVISION OF PUBLIC CONTRACTS
WASHINGTON

NOTICE OF HEARING BEFORE PUBLIC CONTRACTS BOARD

Monday, July 25, 1938, 10 a. m.

Conference Room B, Departmental Auditorium, 13th & Constitution Ave. Washington

The Public Contracts Board will hold a hearing at the place and on the date above-indicated, to take testimony

upon which findings of fact will be made to assist the Secretary of Labor in determining, pursuant to Section 1(b) of the Public Contracts Act*, the prevailing minimum wages in the Iron and Steel Industry.

At this hearing an opportunity to be heard, either in person or by duly appointed representatives, will be given to persons engaged in the above named industry, either as employees or as employers, to groups of such persons, and to others within the discretion of the Board. Briefs or telegraphic communications may be filed but they should be received by the Board on or before the hearing date. It is suggested that when it is convenient five copies of briefs be submitted. Employers appearing in person, or by representatives, or presenting briefs, should furnish the Board with the following essential data:

(1) Name of firm
(2) Plant address
(3) Total number of employees in plant
(4) Number of male employees
(5) Number of female employees
(6) Classification of employees by occupations, including number engaged in each operation
(7) Hourly wages in each operation with designation of applicable time period
(8) If paid on piece work basis, weekly earnings in each class of employees
(9) Hours worked per week

This outline of suggested data is not meant to exclude the submission of any other pertinent information which an employer may desire to submit.

Employees appearing at the hearing, either in person or by their representatives, or submitting briefs, should acquaint the Board with facts as to the wages now being paid in the industry.

Dated: July 11, 1938.

L. METCALFE WALLING,
Administrator.

*(49 Stat. 2036; 41 U. S. C. Sup. III 35.)

34 (541)

EXHIBIT B

U. S. Department of Labor
Washington

Division of Public Contracts

In the Matter of the Determination
of the Prevailing Minimum Wages in
the Iron and Steel Industry

Notice of Extension of Time to File Briefs

In view of requests which have been made for the text of the report of the Public Contracts Board in addition to the findings and recommendations which have already been served on interested parties I am enclosing herewith the full text and I am extending the period for filing briefs to December 10, 1938.

L. METCALFE WALLING
Administrator

Dated: November 19, 1938
Enclosure

35 Washington, D. C.
October 27, 1938

In the Matter of Prevailing Minimum Wages in the Iron and Steel Industry Pursuant to Section 1(b) of the Act of June 30, 1936, Public Act No. 846, 74th Congress

Findings of Fact, Conclusions, and Recommendation in the Above-Entitled Matter by the Public Contracts Board for the Consideration of the Secretary of Labor
Written by Thomas Holland

36 TABLE OF CONTENTS.

	Original	Print
I. Introductory	1	49
II. Definition of the Industry	5	45
III. Basis for Findings with Respect to the Prevailing Minimum Wages in the Industry	8	58
IV. Presentation of the Wage Data in the Record	11	62
V. Analysis of the Data in the Light of Tonnage Capacity—By States and for the United States	24	75
1. Summary of the above	68-69	115-116
2. Coverage by size of company	71-74	118-121
VI. Analysis of the Data and Findings with Respect to the Prevailing Minimum Wages in the Industry	75	125
1. Summary of data by common labor rate	75	123
2. Summary of data by location of plants	78-84	129
VII. Wages Below the Base Rate for Common Labor and Findings Thereto	126	194
VIII. Conclusions With Regard to the Position of Small and Medium-Sized Companies as Related to These Proceedings	135	204

37 *Findings of Fact and Recommendation of the Public Contracts Board in the Matter of Prevailing Minimum Wages in the Iron and Steel Industry*

I

A public hearing in the above-entitled matter was held before the Public Contracts Board on July 25 and 26, 1938. Notice of this hearing (Exhibit A), dated July 11, 1938, was given to 511 companies, members of the iron and steel industry and of closely allied industries. Thirty-two trade associations, including the American Iron and Steel Institute, and 13 trade publications for the iron and steel and related industries were given notice of the hearing.

Notice of the hearing was given the chairman and the secretary of the Steel Workers' Organizing Committee and to officials of the Amalgamated Association of Iron, Steel and Tin Workers of America. Officials of the American Federation of Labor were notified as were several of the international unions affiliated with the American Federation of Labor. A number of Federal and State government officials and other parties interested in the proceedings were also sent notices. The complete list of parties notified of the hearing has been made a part of the record as Exhibit B.

Representatives of industry and labor gave testimony before the Board with respect to the questions at issue and numerous exhibits containing wage data and other information were also made a part of the record. Testimony was given and exhibits were offered for the record by representatives of the Bureau of Labor Statistics and the Public Contracts Division.

Appearances were entered at the hearing before the Board for the following companies, trade associations and labor organizations:

The Amalgamated Association of Iron, Steel & Tin Workers of America, Pittsburgh, Pa.
American Federation of Labor, Washington, D. C.
Andrews Steel Comp. ny, Newport, Kentucky
Bethlehem Steel Company, Bethlehem, Pa.
Bricklayers International Union, Washington, D. C.
The Carpenter Steel Company, Reading
Central Iron & Steel Company, Harrisburg, Pa.

Cohoes Rolling Mill Company, Cohoes, New York
Columbia Steel & Shafting Company, Pittsburgh, Pa.
Committee for Industrial Organization, Washington, D. C.
Crucible Steel Company of America, New York City
Henry Disston & Sons, Inc., Philadelphia
The Eastern Rolling Mill Company, Baltimore
Granite City Steel Company, Granite City, Illinois
38 Harrisburg Steel Corporation, Harrisburg
Inland Steel Company, Chicago
Jones & Laughlin Steel Corporation, Pittsburgh
Lukens Steel Company, Coatesville, Pennsylvania
Machinery & Allied Products Institute, Chicago
National Steel Corporation, Pittsburgh
Rail Steel Bar Association, Chicago:

Connors Steel Co., Birmingham
Calumet Steel Co., Chicago
Franklin Steel Works, Franklin, Pa.
Missouri Rolling Mill Corp., St. Louis
Knoxville Iron Co., Knoxville, Tenn.
Pollack Steel Co., Marion, Ohio
Eckels-Nye Steel Co., Syracuse
Buffalo Steel Co., Tonawanda, N. Y.
Sweet's Steel Co., Williamsport, Pa.
Texas Steel Co., Ft. Worth
West Virginia Rail Co., Huntington

Republic Steel Corporation, Cleveland
Sharon Steel Corporation, Sharon
Sloss-Sheffield Steel & Iron Company, Birmingham
South Chester Tube Company, Chester
Steel Founders Society of America, Cleveland
Steel Plate Fabricators Association, Chicago
Steel Workers' Organizing Committee, Pittsburgh
U. S. Steel Corporation of Delaware, Pittsburgh:

American Steel & Wire Co.
Carnegie-Illinois Steel Corp.
Columbia Steel Co.
National Tube Co.
Tennessee Coal, Iron & Railroad Co.

Vanadium-Alloys Steel Company, Pittsburgh
Wheeling Steel Corporation, Wheeling
The Youngstown Sheet & Tube Company, Youngstown

During the hearing and immediately thereafter the Board received from members of industry not represented at the hearing a number of letters, telegrams, and briefs containing wage data and other information relevant to these proceedings. These letters, telegrams and briefs, submitted by the following parties, have been incorporated in the public record:

The Aetna-Standard Engineering Co., Youngstown, Ohio
The American Rolling Mill Co., Middletown, Ohio
The American Tube & Stamping Plant, Bridgeport, Conn.
Apollo Steel Co., Apollo, Pa.
Atlantic Iron Works Co., Inc., Norfolk, Va.
Bristol Steel & Iron Works, Inc., Bristol, Va.-Tenn.
Buckeye Rolling Mill Co., Wheeling, W. Va.
The Burden Iron Co., Troy, N. Y.
Chateaugay Ore & Iron Co., Lyon Mountain, N. Y.
Chicago Bridge & Iron Co., Chicago, Ill.
Enterprise Wheel & Car Corp., Bristol, Tenn.-Va.
Glamorgan Pipe & Foundry Co., Lynchburg, Va.
Granite City Steel Co., Granite City, Ill.
Illinois Mfrs. Assn., Chicago, Ill.
Kalamazoo Foundry & Machine Co., Kalamazoo, Mich.
Keystone Drawn Steel Co., Spring City, Pa.
39 Kilby Steel Co., Anniston, Ala.
E. J. Lavino & Co., Philadelphia, Pa.
Lynchburg, Virginia, Chamber of Commerce
Lynchburg Foundry Co., Lynchburg, Va.
McInnes Steel Co., Corry, Pa.
The Midvale Co., Philadelphia, Pa.
The Milton Mfg. Co., Milton, Pa.
National Bearing Metals Corp., Portsmouth, Va.
Old Dominion Iron & Steel Works, Richmond, Va.
Phoenix Iron Co., Phoenixville, Pa.
Pine Iron Works, Co., Pine Forge, Pa.
Pittsburgh Steel Co., Pittsburgh, Pa.
Poor & Co., Inc., New York City
George W. Prentiss & Co., Holyoke, Mass.
Richmond Engineering Co., Richmond, Va.
Roanoke, Virginia, Chamber of Commerce

Roanoke Iron & Bridge Works, Inc., Roanoke, Va.
Roanoke Iron Works, Inc., Roanoke, Va.
Ross Structural Iron Works, Inc., Richmond, Va.
Rustless Iron & Steel Corp., Baltimore, Md.
Sheffield Steel Corp., Kansas City, Mo.
Simonds Saw & Steel Co., Lockport, N. Y.
Southern Assn. of Ornamental Metal Mfrs., Washington, D. C.
Troy Furnace Corp., Troy, N. Y.
Ulster Iron Works, Dover, N. J.
Virginia Bridge Co., Roanoke, Va.
Virginia Manufacturers Association, Richmond, Va.
Virginia Metal Mfg. Co., Roanoke, Va.
Walker Machine & Foundry Corp., Roanoke, Va.
The Wallingford Steel Co., Wallingford, Conn.
Wilson Steel & Wire Co., Chicago, Ill.
Alan Wood Steel Co., Conshohocken, Pa.
Woodward Iron Co., Woodward, Ala.
G. F. Wright Steel & Wire Co., Worcester, Mass.
Wrought Iron Co., Lebanon, Pa.

Subsequent to the hearing, a notice, dated July 29, 1938, was sent to those companies listed in Exhibit B from which no reports were received in response to the original notice of hearing, informing such companies that the record would be held open until August 8, 1938 for the submission of wage data and other information with respect to prevailing minimum wages in the iron and steel industry. Responses in the form of letters, telegrams and briefs were received to the second notice from the following companies and were made a part of the public record:

Acme Steel & Malleable Iron Works, Buffalo, N. Y.
American Car & Foundry Co., Berwick, Pa.
American Steel Co., Pittsburgh, Pa.
The Atlantic Wire Co., Branford, Conn.
The Baldwin Locomotive Works, Philadelphia, Pa.
Baldwin-Southwark Corp., Philadelphia, Pa.
Braeburn Alloy Steel Corp., Braeburn, Pa.
The E. & G. Brooke Iron Co., Birdsboro, Pa.
Buffalo Bolt Co., N. Tonawanda, N. Y.
Chicago Steel Foundry Co., Chicago, Ill.
Consolidated Steel Corp., Ltd., Los Angeles, Calif.

Continental Steel Corp., Kokomo, Ind.
Chapman Price Steel Co., Indianapolis, Ind.
Detroit Seamless Steel Tubes Co., Detroit, Mich.
Detroit Steel Corp., Detroit, Mich.
Ellwood Ivin's Steel Tube Works, Philadelphia, Pa.
Empire Finished Steel Corp., Newark, N. J.
Erie Forge Co., Erie, Pa.
Erie Forge & Steel Co., Erie, Pa.
Firth-Sterling Steel Co., McKeesport, Pa.
The Fitzsimmons Co., Youngstown, Ohio
Gardner-Denver Co., Quincy, Ill.
Globe Iron Co., Jackson, Ohio
Graver Tank & Mfg. Co., Inc., Catasauqua, Pa.
Hamilton Coke & Iron Division of the American Rolling Mill Co., Hamilton, Ohio
Heppenstall Co., Pittsburgh, Pa.
Industrial Brownhoist Corp., Bay City, Mich.
Jenifer Iron Co., Jenifer, Ala.
Johnson Steel & Wire Co., Worcester, Mass.
Judson Pacific Co., San Francisco, Calif.
Kensington Steel Co., Chicago, Ill.
Laclede Steel Co., St. Louis, Mo.
Latrobe Electric Steel Co., Latrobe, Pa.
Logan Iron & Steel Co., Burnham, Pa.
Los Angeles Steel Casting Co., Ltd., Los Angeles, Calif.
John Mohr & Sons, Chicago, Ill.
Molybdenum Corp. of America, Washington, Pa.
Newberry Lumber & Chemical Co., Newberry, Mich.
The Parkersburg Iron & Steel Co., Pittsburgh, Pa.
Pettibone Mulliken Corp., Chicago, Ill.
Phoenix Mfg. Co., Catasauqua, Pa.
Pittsburgh Tube Co., Pittsburgh, Pa.
Reed Foundry & Machine Co., Kalamazoo, Mich.
Reeves Steel & Mfg. Co., Dover, Ohio
Salem Engineering Co., Salem, Ohio
Sellers Mfg. Co., Chicago, Ill.
Southern Ferro Alloys Co., Chattanooga, Tenn.
Standard Brake Shoe & Foundry Co., Pine Bluff, Ark.
The Stanley Works, New Britain, Conn.
The Superior Sheet Steel Co., Canton, Ohio
Swedish Crucible Steel Co., Detroit, Mich.

Tonawanda Electric Steel Casting Corp., N. Tonawanda, N. Y.
Tonawanda Iron Corp., N. Tonawanda, N. Y.
The Treaty Co., Greenville, Ohio
The Tredegar Co., Richmond, Va.
Tremont Nail Co., Wareham, Mass.
Union Iron Works, Spokane, Wash.
Vulcan Mold & Iron Co., Latrobe, Pa.
The Walworth Co., New York City
Worcester Pressed Steel Co., Worcester, Mass.
Worth Steel Co., Claymont, Del.

Time for the submission of final briefs was allowed to all interested parties until August 22, 1938. Several final briefs analyzing the evidence and offering arguments in support of particular views have been received and are incorporated in the record. On August 22nd the record was regarded as complete and no further additions have been made.

The Board, in making its findings of fact in this matter, has relied upon the testimony received at the public hearing, the exhibits made a part of the record at the time of the hearing and such letters, telegrams, and briefs as have been made a part of the record in the manner stated above. Citations of the record in the following pages refer to the official transcript made by Ward and Paul, Washington, D. C.

41 II

In order to define the iron and steel industry for the purposes of these proceedings, members of industry and representatives of labor were asked to express their opinions as to the proper definition of the industry. It has been suggested that the definition to be used in these proceedings be the same as the definition used in the Code of Fair Competition for the iron and steel industry.

The representative of the United States Steel Corporation said, "It is my view generally that the broad designations as found in the Code are appropriately applicable to a proper definition of the iron and steel industry for the purposes that you gentlemen are considering it" (R 309). In the brief of the Inland Steel Company the follow-

ing recommendation is made: "It is recommended that the iron and steel industry shall be defined in the same manner as in the Code of Fair Competition for the iron and steel industry under the NIRA" (R 634).

The representative of the Republic Steel Corporation said, "The definition used by the Code authority was considered to be a pretty good definition and was worked out carefully at the time" (R. 318). The following statement is taken from the brief of the Andrews Steel Company: "The Code of Fair Competition in the iron and steel industry under the National Recovery Act used what has been considered a very comprehensive and reasonable description of the steel industry and it would seem fair to use the same description in determining the employees who will be recognized as members of the industry" (R 991).

Mr. Phillip Murray, the chairman of the Steel Workers' Organizing Committee, made the following statement: "I desire to recommend that the industry to be included should be limited to blast furnace products, steel works and rolling mill products, wire, wrought pipe and tin plate and terneplate" (R 62). Mr. Lee Pressman, General Counsel for the Committee for Industrial Organization, said, "I would like to state for the record that as far as the Steel Workers' Organizing Committee is concerned, the definition contained in that Code for limiting the industry would be perfectly satisfactory" (R 217). In the brief of the Steel Workers' Organizing Committee the following statement is made: "It was conceded by all interested parties who attended the public hearing that the definition of the iron and steel industry, as contained in the Code of Fair Competition for such industry under the National Industrial Recovery Act, is a fair description of the industry to be covered by the determination in this matter. The Steel Workers' Organizing Committee confirms such understanding and supports such definition" (R. 1393).

We agree with the views expressed by the representatives of industry and labor suggesting that the Code definition may properly be used to define and limit the scope of the present proceedings.

The industry, as the term is defined in Article I, sections 3 and 4 of the Amendment to Code of Fair Competition for

the iron and steel industry (Exhibit M), meant the business of producing and selling certain products which are set forth in the Code as follows:

Axles—rolled or forged
Bale ties—single loop
Bars—alloy steel, hot rolled
Bars—cold finished, carbon and alloy
42 Bars—concrete reinforcing, straight lengths
Bars, ingots, blooms and billets—iron
Bars—merchant steel
Bars—tool steel
Ferro-manganese and spiegeleisen
Girder rails and splice bars therefor
Ingots, blooms, billets and slabs—alloy
Ingots, blooms, billets and slabs—carbon
Light rails—60 pounds or less per yard—and splice bars and angle bars therefor
Standard tee rails of more than 60 pounds per yard—and angle bars and rail joints therefor, or any of such products
Mechanical tubing
Pig iron—foundry, high silicon silvery, malleable, open hearth basic, Bessemer and high silicon Bessemer
Pig iron—low phosphorus
Pipe—standard, line pipe and oil country tubular products
Plates
Posts—fence and sign
Railroad tie plates
Railroad track spikes
Sheet bars
Sheets
Skelp
Steel sheet piling
Strip steel—cold rolled
Strip steel—hot rolled
Structural shapes
Tin plate, tin mill black plate and terne plate
Tubes—boiler
Tube rounds
Wheels—car, rolled steel

Wire—drawn
Wire hoops—twisted or welded
Wire nails and staples, twisted barbless wire, barbed wire, twisted wire fence stays and wire fencing (except chain-link fencing)
Wire rods
Wire—spring
Wire—telephone

There is only one qualification to our acceptance of the definition used in the Code. No purchases of tin plate, tin mill black plate and terneplate have been made by the Government subject to the provisions of the Public Contracts Act (R 28). The wages paid for the production of these products present, in certain aspects, factors which are not found in the production of the other products. Further study of these wages will be necessary and since the problem is not one of immediate concern for Government purchases, we have eliminated the production of tin plate, tin mill black plate and terneplate from the scope of the present proceedings.

The products as set forth above as qualified should serve to limit the scope of the findings in these proceedings and the term "iron and steel industry" as used here is meant to be synonymous with the production and sale of such products.

A request was made at the hearing on behalf of the Machinery and Allied Products Institute that a definition of the iron and steel industry used in these proceedings
43 be qualified "to the effect that there shall not be included in the iron and steel industry blast furnace operations carried on as a part of the processes of production of the products included within another industry" (R 206) and "to the effect that there shall not be included in the iron and steel industry the operation of open hearth or electric furnaces for the conversion of pig iron and scrap into steel when carried on by employees within another industry as a part of the production processes of the products of such other industry" (R 206).

In the practical application of a definition of the iron and steel industry to Government purchases subject to the Public Contracts Act, the companies that use their iron

and steel products for subsequent fabrication are automatically excluded because the products which they would sell to the Government would not be iron and steel products as defined but, rather, products fabricated from iron and steel. Unless these companies sell to the Government the products of the iron and steel industry as they are set forth in the Code definition, they would not come within the terms of the definition which is being used in these proceedings. Thus, the qualifications of the definition requested by the Machinery and Allied Products Institute are implicit in the Code definition as it would be given application under the Public Contracts Act.

44

III

The evidence in the record leads us to the conclusion that the proper basis or foundation for findings with respect to the minimum wages prevailing in the iron and steel industry are the base rates paid to the workers classified as common laborers. We have made use of the definition of common laborer as it has been formulated by the Bureau of Labor Statistics. By this definition a common laborer is "one who performs physical or manual labor of a general character and simple nature, requiring no special training, judgment, nor skill" (R. 51). The customary practice in the iron and steel industry is to pay these common laborers wages that are known in the industry as base rates and it is the general practice in the industry to pay the base or entrance rate to the worker as long as he continues to be employed at common labor (R. 125, 223, 348, 440).

The workers classified as common laborers constitute a substantially large proportion of all the workers engaged in the industry. While the proportion varies from plant to plant and among the various producing centers throughout the industry, an analysis of the wage data submitted for the record in these proceedings and presented below in section 4 shows that the 26,887 workers classified as common laborers by the reporting iron and steel companies constitute 8.6 per cent of the total of 313,064 workers reported by these companies.

The proportion of common labor to the total number of workers reported by the iron and steel companies is shown in the following table for each of the producing states:

State	Proportion of common labor to total workers reported (per cent)
United States	8.6
Alabama	14.0
California	4.6
Connecticut	7.2
Delaware	7.5
Illinois	10.0
Indiana	8.6
Kentucky	14.6
Maryland	9.6
Massachusetts	5.9
Michigan	8.0
Minnesota	7.4
Missouri	12.9
New Jersey	14.3
New York	11.2
Ohio	5.9
Oklahoma	20.4
Pennsylvania	7.5
Utah	10.2
Virginia	32.9
Washington	3.9
West Virginia	16.3

The above table shows that, despite variations by states, for the industry as a whole there is a considerable number of workers classified as common laborers and we feel that there is a sufficient number to constitute the base or the foundation upon which to rest our findings as to the minimum wages prevailing in this industry. Moreover, the common labor classification is the largest occupational grouping to be found in the lower end of the industry's wage scale (R. 333, 359, 393). As an illustration, the Sheffield Steel Corporation in its Kansas City, Missouri plant pays 217 workers the base rate for common labor. Fifty-one workers are paid the next higher rate, and above that the numbers receiving the next higher rates are 78, 163, 105, and 22 (Exhibit C-1). The Granite City Steel Company reports that it has 297 workers receiving the base rate and that between the base rate of 58.5 cents an hour and other wage rates up to 62.5 cents an hour there is a total of 142 workers receiving such rates (R. 704). The South Chester Tube Company has reported that 113 workers receive the base rate of 56.5 cents an hour and that 145 receive this base rate with piece work pay extra. From 57 to 62.5 cents an hour there are 36 workers and at 63 cents an hour, 136 workers (R. 742).

The base rate for common labor in the industry is substantially a rock bottom rate, that is to say, there is not to be found any extensive grouping of workers at wages below the base rates (R. 129, 176, 223, 305, 315, 332, 347, 354, 400, 439, 616, 621). An examination of the data in the record shows that there are classifications of workers in the industry receiving wages below the base rates for common labor. These are not sufficient to detract from the importance of the common labor classification as the proper foundation for our findings of prevailing minimum wages, and we have given consideration to these wages below the basic minimum category in section VII below.

The base rates paid to common labor are important in the industry not only because of the relative size of the common labor classification but also because of the key position of the base rates in relation to the wage rates paid in other occupations in the industry. A letter from the Central Iron and Steel Company states that: "The entire wage structure of our plant is based on the basic or common labor rate" (R 758). In the brief of the Youngstown Sheet and Tube Company, the statement is made that: "In the evolution of rates of pay for the multifarious kinds of labor the basic wage rate for common labor always is used as the base or starting point and from such base rate the specific rates for the multifarious employments are developed" (R 443).

The Crucible Steel Company says in its brief that: "The entire wage structure for common labor, semi-skilled and skilled occupations is predicated on the base rate for common labor" (R 451). A letter from Henry Disston and Sons states that: "It will be realized that the common or unskilled labor rate is the basis of any hourly wage structure in a plant and that changes in this rate must eventually be reflected in the rates above the common labor rate" (R 708). The Andrews Steel brief refers to "the minimum wage rates paid to that class of labor known as 'common labor' which, according to long-established usage, receives the minimum hourly wage rates paid for employment in the steel industry" (R 900).

The Inland Steel Company's brief makes the statement that: "The wage structure for hourly-paid employees is built upon the basic common labor rate, and, except for minor adjustments to meet changing conditions, all other

rates for hourly-paid employees will vary with the basic common labor rate" (R 637). The George W. Prentiss Company in a letter states that: "Skilled and supervisory pay is largely determined by the base rate paid unskilled labor" (R 272). In its brief the Bethlehem Steel Company says, "It is also a matter of common knowledge that the wage rate of common laborers in the steel industry is a basic wage rate to which the wage rates of semi-skilled and skilled workmen in the industry bear a definite relation" (R 1250). Referring to the base rate for common labor the brief of the Wheeling Steel Corporation says, "this rate is the foundation of the wage structure and all other rates are rather definitely related to it" (R 632). Mr. Parker, representing the Carpenter Steel Company, testified that "any changes made in the existing rates of common labor will affect all those in the higher brackets" (R. 366).

From these quotations it is apparent that the base rates for common labor occupy an especially important and key position in the whole wage scale of the industry. It is clear from the evidence that the members of the industry regard the common labor classification as the proper foundation for finding the prevailing minimum wages in the industry.

Mr. Murray, speaking for the Steel Workers' Organizing Committee, said, "I also wish to recommend that such prevailing minimum wage be limited to that for common labor" (R 63).

In view of the evidence that the common labor classification accounts for a substantial proportion of all the workers in the industry, that it is the largest occupational grouping in the lower portion of the industry's wage scale, and that the base rate is substantially a rock bottom wage, we have taken the base rates as the foundation for our findings of prevailing minimum wages. We have also given weight to the fact that the members of the industry regard the base rate for common labor as a key wage and, further, that members of the industry and representatives of the Steel Workers' Organizing Committee have specifically recommended the adoption of the common labor classification as the foundation for these proceedings.

IV

47 The prevailing minimum wages in the iron and steel industry, as in any industry, must be derived from current information about the minimum wages being paid in the industry and the number of workers to whom these wages are paid. In response to the notice of hearing wage data were reported to the Board by members of the iron and steel industry and by representatives of organized labor in the industry. In a few instances wage data were received from establishments not a part of the iron and steel industry. We present in this section in summary form all of the wage data received by the Board.

The table below gives the names of the reporting companies in alphabetical order. The locations of the plants reported by the companies are also given. For each of the plants is given the total number of employees in the plant as reported by the company operating the plant. In most instances the totals so reported include only productive workers but in some reports all employees in the plant are included. It has not been possible to determine the number of non-productive workers so reported with any degree of precision but it may be stated that the proportion included is very small and that the figures on total plant employment, in almost every instance, give only the productive workers in the plant. Included in the summary below is the number of workers in each reported plant being paid the base rate for common labor. Also included in another column is the base rate being paid in each reported plant. The last column in the table gives the base rate reported by the Steel Workers' Organizing Committee, in those cases where the union has reported a collective agreement to be in force in a plant.

Name of Company	Location of Plant	Total number of workers in plant	Number of workers in plant paid base rate for common labor	Base rate in plant for common labor as reported by employer (cents per hour)	Base rate in plant having union agreement as reported by S.W.O.C. (cents per hour)
Acme Steel & Malleable Iron Works	Buffalo, N. Y.	231	75	.58	
Aetna Standard Engineering Co.	Warren, Ohio	109	31	.625	
Aetna Standard Engineering Co.	Ellwood City, Pa.	84	10	.625	
Allegheny Steel Co.	Brackenridge, Pa.)				
Allegheny Steel Co.	West Leechburg, Pa.)				.625
American Car & Foundry Co.	Berwick, Pa.	135	24	.48	
American Rolling Mill Co.	Columbus, Middletown and Zanesville, Ohio; Ashland, Ky.; and Butler, Pa.	8,509	337	.625	
American Steel Co.	Pittsburgh, Pa.	5			
American Steel & Wire Co.	Chicago District:				
	Anderson, Ind.	81	12	.60	.60
	DeKalb, Ill.	225	4	.60	.60
	Joliet, Ill.	1,244	80	.60	.60
	Waukegan, Ill.	1,430	20	.625	.625
American Steel & Wire Co.	Cleveland, Ohio	3,328	69	.625	.625
American Steel & Wire Co.	Duluth, Minn.	1,303	97	.60	.60

13. (continued)

American Steel & Wire Co.	Pittsburgh District:				
	Allentown, Pa.	713	23	.565	.565
	Donora, Pa.	2,804	134	.625	.625
	Rankin, Pa.	386	16	.625	.625
American Steel & Wire Co.	Worcester District:				
	New Haven, Conn.	460	8	.625	.625
	Trenton, N. J.	323	9	.625	.625
	Worcester, Mass.	2,819	98	.625	.625
American Tube & Stamping Co.	Bridgeport, Conn.	639	56	.55	
Andrews Steel Co.	Newport, Ky.	2,500	680	.56	.56
Apollo Steel Co.	Apollo, Pa.	1,000	60	.53	
The Atlantic Wire Co.	Branford, Conn.	130	13	.525	
Bethlehem Steel Co.	Bethlehem, Pa.	8,342	391	.565	
Bethlehem Steel Co.	Buffalo, N. Y.	6,853	603	.595	
Bethlehem Steel Co.	Coatesville, Pa.	325	44	.565	
Bethlehem Steel Co.	Danville, Pa.	243	52	.565	
Bethlehem Steel Co.	Johnstown, Pa.	7,649	515	.585	
Bethlehem Steel Co.	Lebanon, Pa.	654	129	.565	
Bethlehem Steel Co.	Los Angeles, Calif.	553	24	.58	
Bethlehem Steel Co.	San Francisco, Calif.	603	4	.60	
Bethlehem Steel Co.	Seattle, Wash.	434	17	.60	
Bethlehem Steel Co.	Sparrows Point, Md.	15,846	1,477	.565	

14. (continued)

Bethlehem Steel Co.	Steelton, Pa.	3,108	351	.565	
Bethlehem Steel Co.	Williamsport, Pa.	434	130	.565	
Braeburn Alloy Steel Corp.	Braeburn, Pa.	160	16	.625	.625
Bristol Steel & Iron Works, Inc.	Bristol, Va.-Tenn.	42	2	.30	
E. & G. Brooke Iron Co.	Birdsboro, Pa.	215	47	.54	
Buckeye Rolling Mill Co.	Newark, Ohio	53	23	.565	
Buffalo Bolt Co.	North Tonawanda, N. Y.	856	96	.60	
Buffalo Steel Co.	Tonawanda, N. Y.	178	110	.505	
Burden Iron Co.	Troy, N. Y.	300	60	.46	
Calumet Steel Co.	Chicago Heights, Ill.	470	62	.595	
Carnegie-Illinois Steel Corp.	Chicago District:				
	Elwood, Ind.	272	272	.595	.595
	Gary, Ind.	20,654	2,185	.625	.625
	Joliet, Ill.	50	7	.60	.60
	South Chicago, Ill.	8,507	948	.625	.625
Carnegie-Illinois Steel Corp.	Johnstown, Pa.	1,237	88	.585	.585
Carnegie-Illinois Steel Corp.	Pittsburgh District:				
	Bessemer, Pa.	1,767	113	.625	.625
	Cambridge, Ohio	30	17	.585	.585
	Canton, Ohio	216	28	.625	.625
	Clairton, Pa.	4,143	331	.625	.625
	Duquesne, Pa.	4,105	81	.625	.625
	Etna, Pa.	266	37	.625	.625
	Farrell, Pa.	3,304	146	.625	.625

(continued)

Carnegie-Illinois Steel Corp.	Irvin, Pa.	1,116	92	.625	.625
	McKeesport, Pa.	411	16	.625	.625
Carnegie-Illinois Steel Corp.	Pittsburgh District:				
	Martins Ferry, Ohio	1,473	78	.625	.625
	Mingo Junction, Ohio	1,175	151	.625	.625
	Morgantown, W. Va.	13	12	.56	.56
	Munhall, Pa.	8,767	386	.625	.625
	New Castle, Pa.	2,623	46	.625	.625
	Philadelphia, Pa.	58	20	.56	.56
	Scottdale, Pa.	8	7	.625	.625
	Vandergrift, Pa.	2,319	93	.625	.625
	Youngstown, Ohio	6,914	386	.625	.625
Carpenter Steel Co.,	Kenilworth, N. J.	45	0	.57	
Carpenter Steel Co.	Reading, Pa.	834	56	.57	
Central Iron & Steel Co.	Harrisburg, Pa.	1,210	153	.54	
Chapman Price Steel Co.,	Indianapolis, Ind.	393	32	.55	.55
Chateaugay Ore & Iron Co.	Lyon Mountain, N. Y.	103	18	.30	
Chicago Steel Foundry Co.	Chicago, Ill.	90	4	.50	
Cohoes Rolling Mill Co.	Cohoes, N. Y.	163	5	.42	
Columbia Steel Co.	Pittsburgh, Calif.	2,093	99	.60	.60
Columbia Steel Co.	San Francisco, Calif.	90	3	.65	.65
Columbia Steel Co.	Scranton, Utah	196	20	.60	.60
Columbia Steel Co.	Torrance, Calif.	942	68	.58	.58

(continued)

Connors Steel Co.	Birmingham, Ala. 1/				
Consolidated Steel Corp., Ltd.	Los Angeles, Calif.	502	52	.65	
Continental Steel Corp.	Kokomo and Indianapolis Ind.	2,063	129	.55	.55
Crucible Steel Co. of America:					
Park Works	Pittsburgh, Pa.	1,447	221	.625	.625
LaBelle Works	Pittsburgh, Pa.	609	139	.625	.625
Spring Works	Pittsburgh, Pa.	68	44	.625	.625
Pittsburgh Crucible Steel Co.	Pittsburgh, Pa.	2,199	153	.625	.625
National Drawn Steel Co., Inc.	Pittsburgh, Pa.	23	2	.625	.625
Atha Works	Harrison, N. J.	1,580	300	.565	.565
S. & J. Works	Jersey City, N. J.	335	18	.565	.565
Halcomb Works	Syracuse, N. Y.	1,103	54	.565	.565
Sanderson Works	Syracuse, N. Y.	553	229	.565	.565
Detroit Seamless Steel Tubes Co.	Dearborn, Mich.	193	8	.65	
Detroit Steel Corp.	Detroit, Mich.	222	64	.70	
Henry Disston & Sons, Inc.	Philadelphia, Pa.	310	30	.50	.50
Eastern Rolling Mill Co.	Baltimore, Md.	446	78	.53	.53
Eckels-Nye Steel Co.	Syracuse, N. Y. 2/	80	16	.485	
Ellwood Ivin's Steel Tube Works	Philadelphia, Pa.	24	5	.595	
Empire Finished Steel Corp.	Newark, N. J.	80	20	.45	
Enterprise Wheel & Car Corp.	Bristol, Tenn.-Va.	150	30	.38	

1/ This company is one of 3 Southern establishments which employ a total of 653 wage earners of which number 221 receive an average base rate of 34.5¢ per hour.

2/ Data approximated on the basis of information supplied by the Rail Steel Bar Assn.

(continued)

Erie Forge Co.	Erie, Pa.	241	3	.53	
Erie Forge & Steel Co.	Erie, Pa.	625	9	.53	
Firth-Sterling Steel Co.	McKeesport, Pa.	675	25	.625	.625
The Fitzsimmons Co.	Youngstown, Ohio	72	22	.625	
Franklin Steel Works	Franklin, Pa.	212	15	.50	
Gardner-Denver Co.	Quincy, Ill. 3/	917	198	.45	
Glamorgan Pipe & Foundry Co.	Lynchburg, Va.	180	38	.42	
Globe Iron Co.	Jackson, Ohio	162	25	.5625	
Granite City Steel Co.	Granite City, Ill.	2,089	297	.585	
Great Lakes Steel Corp., Hanna Furnace Div.	Delray, Mich.	337	74	.63	
Great Lakes Steel Corp., Great Lakes Div.	Ecorse, Mich.	4,089	186	.63	
Great Lakes Steel Corp., Michigan Steel Div.	Ecorse, Mich.	535	17	.63	
Hanna Furnace Corp.	Buffalo, N. Y.	395	45	.595	
Harrisburg Steel Corp.	Harrisburg, Pa.	779	35	.54	
Heppenstal Co.	Bridgeport, Conn.	175	24	.57	.57
Heppenstal Co.	Pittsburgh, Pa.	501	43	.635	.635

3/ Also operates plants in Missouri and Colorado; the data shown are composite for all operations.

(continued)

Industrial Brownhoist Corp.	Bay City, Mich.	448	0	.40	
Inland Steel Co.	Chicago Heights, Ill.	368	74	.595	
Inland Steel Co.	Indiana Harbor, Ind.	9,726	304	.625	
Jessop Steel Co.	Washington, Pa.				.625
Johnson Steel & Wire Co.	Worcester, Mass.	273	50	.55	
Jones & Laughlin Steel Corp.	Aliquippa, Pa.	9,247	573	.625	.625
Jones & Laughlin Steel Corp.	Pittsburgh, Pa.	6,843	1,313	.625	.625
Judson-Pacific Co.	Oakland & San Francisco, Calif.	70	2	.575	
Kalamazoo Foundry & Machine Co.	Kalamazoo, Mich. 4/	23	5	.50	
Kensington Steel Co.	Chicago, Ill.	105	6	.50	
Kilby Steel Co.	Anniston, Ala.	250		.36	
Knoxville Iron Co.	Knoxville, Tenn. 1/ (See p. 16)				
Laclede Steel Co.	Alton and Madison, Ill.	825	88	.565	
Latrobe Electric Steel Co.	Latrobe, Pa.	529	39	.625	.625
E. J. Lavino & Co.	Reusens, Va.	175	91	.43	
E. J. Lavino & Co.	Sheridan, Lebanon County, Pa.	180	95	.485	

4/ Base rate shown as from 40¢ to 50¢ per hour; the 50¢ figure is used because it appears to be more in keeping with the remainder of the wage structure.

19.

(continued)

Logan Iron & Steel Co.	Burnham, Pa.	165	38	.49	
Los Angeles Steel Casting Co.	Los Angeles, Calif.	158	54	.55	
Lukens Steel Co.	Coatesville, Pa.	1,640	230	.565	.565
Midvale Steel Co.	Philadelphia, Pa.	2,075	48	.57	
Milton Mfg. Co.	Milton, Pa.	345	6	.465	
John Mohr & Sons	Chicago, Ill.	37	0	.66	
Molybdenum Corp. of America	Washington, Pa.	74	15	.625	
National Bearing Metals Corp.	Portsmouth, Va.	63	21	.35	
National Tube Co.	Gary, Ind.	99	0	.625	.625
National Tube Co.	Lorain, Ohio	7,456	17	.625	.625
National Tube Co.	Ellwood City, Pa.	2,394	0	.625	.625
National Tube Co.	McKeesport, Pa.	3,334	1	.625	.625
Newberry Lumber & Chemical Co.	Newberry, Mich.	342	121	.38	
Old Dominion Iron & Steel Works	Richmond, Va.	100	25		
Otis Steel Co.	Cleveland, Ohio				.625
Parkersburg Iron & Steel Co.	Parkersburg, W. Va.	588	99	.50	
Pettibone Mulliken Corp.	Chicago, Ill.	614	24	.55	
Phoenix Iron Co.	Phoenixville, Pa.	1,200	58	.565	

(continued)

Pine Iron Works	Pine Forge, Pa.	52	19 5/	.43	
Pittsburgh Steel Co.	Pittsburgh, Pa.	5,189	430	.625	.625
Pittsburgh Tube Co.	Monaca, Pa.	193	2	.60	
Pollak Steel Co.	Marion, Ohio	335	23	.51	
Poor & Co., Inc. 6/	Troy, N. Y.	132	24	.52	
George W. Prentiss & Co.	Holyoke, Mass.	150	15	.55	
Reed Foundry & Machine Co.	Kalamazoo, Mich.	81	20	.561	
Reeves Steel & Mfg. Co.	Dover, Ohio	750	20	.605	
Republic Steel Corp.	Birmingham, Ala.	360	84	.40	
Republic Steel Corp.	Gadsden, Ala.	2,487	437	.365	
Republic Steel Corp.	Chicago, Ill.	1,238	109	.625	
Republic Steel Corp.	Moline, Ill.	139	8	.56	
Republic Steel Corp.	Monroe, Mich.	560	32	.625	
Republic Steel Corp.	Buffalo, N. Y.	1,338	59	.595	
Republic Steel Corp.	Canton and Massillon, Ohio	4,131	114	.625	
Republic Steel Corp.	Cleveland, Ohio	2,218	252	.625	

5/ Data are estimated from company correspondence.
6/ Reported for the Rail Joint Company.

(continued)

Republic Steel Corp.	Niles and Warren, O.	5,163	281	.625	
Republic Steel Corp.	Youngstown, Ohio	5,825	269	.625	
Republic Steel Corp.	Pittsburgh, Pa.	181	14	.625	
Richmond Engineering Co.	Richmond, Va.	100	33	.35	
Roanoke Iron & Bridge Works, Inc.	Roanoke, Va.	100		.35	
Roanoke Iron Works, Inc.	Roanoke, Va. 5/ (See p.20)	35	17	.35	
Ross Structural Iron Works, Inc.	Richmond, Va.	35 5/ (See p. 20)		.325	
Rotary Electric Steel Co.	Detroit, Mich.				.625
Rustless Iron & Steel Corp.	Baltimore, Md.	247	30	.54	
Salem Engineering Co.	Salem, Ohio	33			
Sharon Steel Corp.	Lowellville & Youngstown, Ohio & Sharon, Pa.	1,786	196	.625	.625
Sheffield Steel Corp.	Kansas City, Mo.	1,831	217	.55	
Sheffield Steel Corp.	St. Louis, Mo.	329	61	.55	
Sheffield Steel Corp.	Sand Springs, Okla.	186	38	.482	
Simonds Saw & Steel Co.	Lockport, N. Y.	368	49	.55	
Sloss-Sheffield Steel & Iron Co.	Birmingham, Ala.	423	44	.40	
South Chester Tube Co.	Chester, Pa.	614	113	.565	
Standard Brake Shoe & Foundry Co.	Pine Bluff, Ark.	201	96	.30	

(continued)

Superior Sheet Steel Co.	Canton, Ohio	700	14	.55	.55
Swedish Crucible Steel Co.	Detroit, Mich.	124	40	.65	
Sweet's Steel Co.	Williamsport, Pa.	263	99	.485	
Tennessee Coal, Iron & Railroad Co.	Bessemer, Ala.) Ensley, Ala.) Fairfield, Ala.) Pratt City, Ala.)	7,631	988	.45	.45
Texas Steel Co.	Fort Worth, Tex. 1/ (See p. 16)				
Timken Steel & Tube Co.	Canton, Gambrinus and Wooster, Ohio				.625
Tonawanda Electric Steel Casting Corp.	N. Tonawanda, N. Y.	13	5	.55	
Tonawanda Iron Corp.	N. Tonawanda, N. Y.	25	8	.595	
The Treaty Co.	Greenville, Ohio	35	12	.40	
The Tredegar Co.	Richmond, Va. 7/	458	125	.533	
Tremont Nail Co.	Wareham, Mass.	63	13	.495	
Troy Furnace Corp.	Troy, N. Y.	196	37	.50	
Ulster Iron Works	Dover, N. J.	250	35	5/(See p. 20) .50	
Union Iron Works	Spokane, Wash. 8/	145	30	.6125	

7/ The common labor rate shown for this company is the weighted average of several common labor rates.
8/ The figures shown here are averages. The company employs from 140 to 150 wage earners at base rate wages ranging from 60¢ to 62.5¢ per hour.

(continued)

Vulcan Mold & Iron Co.	Latrobe, Pa.	140	39	.625	
Wallingford Steel Co.	Wallingford, Conn.			.50	
Weirton Steel Co.	Steubenville, Ohio	1,015	186	.625	
Weirton Steel Co.	Weirton, W. Va.	8,080	1,136	.625	
West Virginia Rail Co.	Huntington, W. Va.	274	53	.52	
Wheeling Steel Corp. (6 plants)	4 in Ohio	13,727	1,546	.625	.625
	2 in W. Va.	3,132	671	.625	.625
Wilson Steel & Wire Co.	Chicago, Ill.	201	74	.625	
Alan Wood Steel Co.	Conshohocken, Pa.	1,379	255	.565	.565
Woodward Iron Co.	Woodward, Ala.	572	87	.40	.40
Worcester Pressed Steel Co.	Worcester, Mass.	100	17	.50	
Worth Steel Co.	Claymont, Del.	876	66	.57	
G. F. Wright Steel & Wire Co.	Worcester, Mass.	171	18	.58	
Wrought Iron Co.	Lebanon, Pa.	663	154	.465	
Youngstown Sheet & Tube Co.	Chicago District	5,130	321	.625	
Youngstown Sheet & Tube Co.	Youngstown District	9,808	349	.625	

V

For the most part the wage data given in the section above relate to a pay period during the month of July, 1938. Practically all of the data are for the summer of 1938. A few reports have been received for an earlier period but none go back beyond February, 1938. A small number of reports have been received for a pay period during August, 1938. The record offers us prevailing wage statistics in the sense that these statistics give us a view of the minimum wages in the industry currently being paid.

We have concluded from an analysis of the wage data summarized in section 4 above that the statistics in the record cover a substantial proportion of all the workers engaged in the industry during the summer of 1938 and that these wage data give us a large statistical sample. It is not essential nor is it customary that a wage survey of an industry include 100 per cent of the workers in the industry. The Bureau of Labor Statistics which makes wage surveys constantly, seldom, if ever, attempts to make its coverage of an industry 100 per cent complete. It is sufficient if a wage survey gives a sample large enough to display the characteristic features of the wage structure.

In the wage survey summarized in the section above a total of 99 iron and steel companies have submitted their wage data for the record. These companies operate a total of 234 iron and steel plants. In all, 313,064 workers are included in the wage data submitted by the iron and steel companies and of these 26,887 were reported to be classified as common laborers who are being paid the base rates for such work.

Although the report of the Census of Manufactures is not entirely satisfactory for purposes of comparison with the data above, we may take the latest report on the industry, made in 1935 (Exhibit I), as an indication of the coverage of the statistics in the record. The 1935 Census report for the industry reported the average number of wage earners employed in the manufacture of blast furnace products and steel works and rolling mill products to be 374,809 workers. In comparing the coverage of the data from the Census of Manufactures with the data in the record, allowance should be made for the fact that in 1935 the production of ingots

was 48.9 per cent of the ingot capacity of the industry. (R 644), whereas in the summer of 1938, at the time of the hearing, ingot production stood at approximately 36 per cent of capacity (R 122, 644). When allowance is made for the difference in rate of operations, it will be seen that the coverage of the statistics in the record is very nearly the same as the coverage of the Census of Manufactures in 1935.

Another and more satisfactory gauge to the coverage of the data reported in the record may be obtained from a comparison of the number of workers classified as common laborers and paid the base rates with the coverage of the latest survey made by the Bureau of Labor Statistics of entrance rates for common labor in the industry. (R 43, 52). In that survey the Bureau covered 39,649 common laborers working at entrance rates on July 1, 1937. Mr. Perlman, Chief of the Wages and Hours Division of the Bureau of Labor Statistics testified that the coverage of the Bureau's 1937 survey was unusually large (R 49), amounting to "between 80 and 85 percent of the total coverage of the industry" (R 58).

61 At the time the Bureau made this survey the industry was operating at an exceptionally active rate, estimated in terms of ingot production to be 89 or 90 percent of capacity in July, 1937 (R 124) and 72.3 percent of capacity for the year 1937 (R 644). When we take into consideration the fact that in the summer of 1938 the ratio of ingot production to capacity approximated 36 per cent, it will be seen that the number of common laborers covered by the wage sample in the record compares favorably with the 1937 survey of entrance rates for common labor made by the Bureau of Labor Statistics.

The most satisfactory method of appraising the adequacy and the representative nature of the wage statistics in the record is by comparing the capacity to produce the principal products of the industry of the plants reported in the record with the capacity of the plants for which no wage data have been reported. A comparison in terms of capacity to produce will bring out the features of a thoroughgoing wage survey. In addition to an adequate coverage of the total number of workers and common laborers employed in the industry the wage survey should be representative of the location of the plants in the industry, the

size of companies and plants, and the products of the industry. In the following pages in this section, on a state-by-state basis, the productive capacities of the reported plants will be compared with the productive capacities of the plants not reported, and this comparison should answer the question of the adequacy of the coverage of the wage sample in the record and the representative nature of this sample.

Before coming to the figures on capacity a preliminary word is necessary. A total of 511 companies was given notice of the hearing before the Board. These companies operate a total of 753 plants. The list of the companies notified of the hearing was made up principally from "The Directory of Iron and Steel Plants, 1938" (Exhibit B). This Directory is somewhat broader in its listing of companies in the iron and steel industry than is contemplated by the definition of the industry adopted here. It has been found that a substantial number of the companies notified of the hearing do not come within the purview of the iron and steel industry as defined above and consequently, these companies have not been considered by the Board as being a part of the industry as here defined. A few of the companies not regarded as being within the industry reported their wage data in response to the notice of hearing and such reports have been included above in the summary presented in section IV. These reports, however, are not considered in appraising the coverage and representative nature of the wage sample in the record, nor has weight been given these wage data in making our findings of the prevailing minimum wages for the industry. Where it has been decided that the companies to which notices of the hearing were sent but from which no replies were received are not within the definition of the industry as applied here, no weight has been given to them as non-reporting companies.

As a result of the exclusion from consideration of the companies which do not come within the definition of the industry used here, a total of 207 companies operating 292 plants have been dropped from consideration in the following pages. There have been considered as operating within the definition of the industry used here, as we have seen above, 99 companies operating 234 plants for which there

are reports in the record. The companies considered to be within the terms of the definition and to which the notice of the proceedings before the Board was sent number 304. These companies operate a total of 461 plants.

62 If we take the companies notified of these proceedings and within the purview of the definition we have for all intents and purposes the entire iron and steel industry. The comparison of the capacity to produce of the reported plants with the capacity to produce of the non-reported plants will measure with close approximation the adequacy of the wage data in terms of coverage and the representative nature of the data from the standpoint of location, size of company and plant, and product.

In view of the definition adopted here, the *Iron and Steel Works Directory*, 1935 (Exhibit B) will give us a broad view of the companies and plants which constitute the iron and steel industry. We have relied upon this Directory to give us the information concerning the productive capacity of the iron and steel works referred to in the remainder of this paragraph. In making use of these figures on capacity to produce, it is not our intention to make findings of fact with respect to the capacities of the plants to produce. We are using the capacity figures here simply as a means of measuring the adequacy of the wage survey contained in the record. Allowance should be made for omissions and errors, which no doubt are to be found in the following comparison of plant capacity. We believe, however, that the reported and non-reported plants together will give us a thoroughgoing view of the iron and steel industry.

The capacity figures below are given for each state in which there are iron and steel works. The figures are given for each plant except where the statistics are available only by company in a composite form. The location of each plant in the state is given and the name of the operating company. The annual capacity of each plant is given in tons for each product listed. The comparison of annual tonnage capacity is made for pig iron and ferro alloys, steel ingots and steel for castings, and finished hot rolled products. These are the principal products of the industry. In addition to these products a good many plants produce various kinds of specialty products. Where a plant

has capacity to produce only such specialty products its capacity is given in a footnote.

The plant location, company name and annual tonnage capacity are presented first for the plants which have had their wage data reported in the record. The same information is then given for the plants which have not been reported. A comparison of the reported and non-reported plants will show the relative capacity to produce accounted for by the plants for which we have reports in the record, and through such comparison we will be given a gauge to the adequacy of the wage data in terms of numbers of workers employed.

Between the two, the reported and non-reported plants will give us a view of the geographic distribution of the industry in the state. A comparison of the location of the reported and non-reported plants will show to what extent the reported plants are representative of the distribution of the industry throughout the state. From the comparison of plant capacity we may see to what extent our wage survey is representative of the large, medium and small-sized companies and plants in the state. Also the figures as to capacity will show the type of product produced in each plant and we will be able to appraise the representative nature of the survey in terms of type of product.

63 *Alabama*

Wage data for 14 plants located in Alabama have been received by the Board in response to the notices of these proceedings. The following table gives us the location, name, and the capacity to produce for each of the plants for wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity		
		Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Anniston	Kilby Steel Co.		10,000	54,000
Birmingham	Republic Steel Corp.	320,000		
Birmingham (2 plants)	Sloss-Sheffield Steel & Iron Co.	584,000		
Birmingham (7 plants)	Tennessee Coal, Iron & Railroad Co.	1,604,000	1,802,000	1,336,800
Gadsden	Republic Steel Corp.	180,000	400,500	297,600
Woodward (2 plants)	Woodward Iron Co.	465,000		

No reports were received from companies operating the following 4 plants located in the State. Their location, name and productjve capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Anniston	Swann Chemical Co.	23,360		
Birmingham	Connors Steel Co.			60,000
Holt	Central Iron & Coal Co.	126,000		
Jenifer	Jenifer Iron Co.[1]	12,000		

[1] Idle. Source: Report from company and *Iron and Steel Works Directory*, 1935.

The following table contrasts the capacity of the reported plants to produce the principal products with the total capacity of all plants in Alabama:

64

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants:	3,314,360	2,212,500	1,748,400
Total capacity of reported plants:	3,153,000	2,212,500	1,688,400

It is not difficult to appraise the coverage of the wage data for Alabama. Almost the entire pig iron and hot rolled product capacity is accounted for by the reported plants and the ingot capacity is entirely included. The wage data for Alabama are complete in their coverage to a very high degree. The largest iron and steel company in the South, the Tennessee Coal, Iron and Railroad Company, has reported for its plants. The medium-sized plant of the Republic Steel Corporation is among the reported plants. The Birmingham pig iron producers have reported. A small steel company, the Kilby Steel Company, has reported its wage data. The only active plants not reported are two small pig iron producers and one small steel plant. Geographically, the important Birmingham center is almost fully reported on and there are also reports from the smaller producing centers located in smaller communities. We have no hesitancy in concluding that the wage survey for Alabama is more than adequate to give us a well rounded view of the number of workers employed, the location of the plants, the size of the companies and plants, and the nature of the product.

California

Wage data for 5 plants located in California have been received by the Board in response to the notices of these proceedings. The following table gives us the location, name, and the capacity to produce for each of the plants for which wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Los Angeles	Pacific Coast Steel Co.[1]		85,000	66,500
Pittsburgh	Columbia Steel Co.		192,000	135,900
San Francisco	Columbia Steel Co.[2]			
San Francisco	Pacific Coast Steel Co.[1]		155,000	132,000
Torrance	Columbia Steel Co.		171,500	125,500

[1] Reported by the Bethlehem Steel Co.
[2] 13,280 tons wire and springs.

65 No reports were received from companies operating the following 4 plants located in the State. Their location, name and productive capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Los Angeles	West Coast Pipe & Steel Co.[1]			
Oakland	California Wire Cloth Co.[2]			
Oakland	Judson Steel Corp.[3]		76,500	48,200
San Francisco	Simmons Co.[4]			10,000

[1] 12,000 tons pipe
[2] 3,000 tons wire
[3] A report has been received from the Judson-Pacific Co. of San Francisco which shows this company operating a plant at Oakland. Because of a doubt as to the proper applicability of the data submitted to the Oakland plant, the said plant is shown here as non-reported.
[4] Manufacturer of metal beds, bedroom furniture, etc.

The total ingot capacity for the State is 680,000 tons and of this amount the reported plants have 603,500 tons. The total hot rolled products capacity is 518,100 tons and of this amount the reported plants have 459,900 tons. No pig iron is produced in the State. The reported plants account for by far the largest portion of the State's capacity to produce the principal products of the industry, thus indicating the high coverage of the wage data. The industry in California is centered in the neighborhood of Los Angeles and San

Francisco. Two of the 3 plants in Los Angeles are reported and 3 of the 6 plants in San Francisco. The non-reported Los Angeles plant is a small producer of pipe. One of the non-reported San Francisco plants has a small wire-producing capacity. Another non-reported plant here apparently rolls steel for its own use in fabricating other products. The third San Francisco plant non-reported has a small ingot and rolling capacity.

All plants in California are small compared with plants in the East. Large companies, however, operate a majority of the plants. The Columbia Steel Company is a subsidiary of the U. S. Steel Corporation and the Pacific Coast Steel Company a subsidiary of the Bethlehem Steel Company. It is these companies that have reported their plants, and these plants are so representative and inclusive of the industry in California that we have no doubt as to the adequacy of the wage survey for California.

66 *Colorado*

No information was received from the Colorado Fuel & Iron Company in response to the notices given to it of these proceedings. This company accounts for the entire iron and steel capacity of the State. Its capacity to produce the principal products of the industry is as follows:

563,000 tons of pig iron
888,000 tons of steel ingots
663,500 tons of finished hot rolled products

This is an important company in the West and while no information has been received from it, the 1937 survey made by the Bureau of Labor Statistics includes Colorado (R 599) and from this we are able to make an inference with respect to the company's base rate for common labor

Connecticut

Wage data for 5 plants located in Connecticut have been received by the Board in response to the notices of these proceedings. The following table gives us the location, name, and the capacity to produce for each of the plants for which wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Branford	Atlantic Wire Co.[1]			
Bridgeport	Heppenstal Co.[2]			
New Britain	The Stanley Works [3]		144,800	92,500
New Haven	American Steel & Wire Co.[4]			
Wallingford	Wallingford Steel Co.[5]			

[1] 22,500 tons wire
[2] 6,000 tons forgings
[3] 48,000 tons cold rolled strip. Also operates the American Tube & Stamping Company Division located at Bridgeport.
[4] 29,000 tons wire
[5] 20,400 tons cold rolled strip

No reports were received from companies operating the following 5 plants located in the State. Their location, name and productive capacities are as follows:

67

Bridgeport	Bridgeport Screw Co.	10,000 tons wire
Bridgeport	Hazard Wire Rope Co.	14,400 tons wire
Bristol	Wallace Barnes Co.	6,000 tons cold rolled strip
Hartford	Union Drawn Steel Co.	51,600 tons cold drawn products
Shelton	Driscoll Wire Co.	8,000 tons wire

None of the plants which were not reported has capacity to produce pig iron, steel ingots, or finished hot rolled products. The only plant with capacity to produce any of these products is the Stanley Works which has reported. The other reported and non-reported works are engaged in the production of cold rolled and drawn products, forgings, and wire. The plants are all small. The only large company, The American Steel and Wire Company, has reported its wage data.

Apparently the data in the record for Connecticut is not exceptionally large in terms of numbers of workers covered but in view of the substantial portion of the State's capacity accounted for by the reported plants, we feel that the sample in the record is adequate, especially in view of its representative nature in terms of geographical location, size of plant and company, and nature of produet.

Delaware

Wage data for one plant located in Delaware have been received by the Board in response to the notices of these

proceedings. This plant accounts for the entire productive capacity of the industry in Delaware. Its name, location and capacity is as follows:

Worth Steel Co., Claymont—378,000 tons steel ingots
252,000 tons finished hot rolled products

Georgia

No information was received from the Atlantic Steel Company in response to the notices given to it of these proceedings. This company accounts for the entire iron and steel capacity of the State. Its capacity to produce the principal products of the industry is as follows:

137,040 tons of steel ingots
148,500 tons of finished hot rolled products

68

Illinois

Wage data for 17 plants located in Illinois have been received by the Board in response to the notices of these proceedings. The following table gives us the location, name, and the capacity to produce for each of the plants for which wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity		
		Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Alton	Laclede Steel Co.		235,400	128,550
Chicago	Wilson Steel & Wire Co.[1]			
Chicago	Youngstown Sheet & Tube Co.	602,400		
Chicago Heights	Calumet Steel Co.			50,000
Chicago Heights	Inland Steel Corp.			90,000
DeKalb	American Steel & Wire Co.[2]			
Evanston	Youngstown Sheet & Tube Co.[3]			
Granite City	Granite City Steel Co.		400,000	275,000
Joliet (3 plants)	American Steel & Wire Co.[4]			
Joliet	Carnegie-Illinois Steel Corp.	483,000	475,000	258,500
Madison	Laclede Steel Co.			103,000
Moline	Republic Steel Corp.			51,000
South Chicago	Carnegie-Illinois Steel Corp.	3,061,800	4,716,400	2,445,000
South Chicago	Republic Steel Corp.		408,000	321,000
Waukegan	American Steel & Wire Co.			225,000

[1] Capacity not given.
[2] 146,950 tons wire, 38,400 tons wire nails, and 31,250 tons wire fencing.
[3] 112,000 tons miscellaneous finished products.
[4] 360,700 tons wire and nails.

69 No reports were received from companies operating the following 23 plants located in the State. Their location, name and productive capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Chicago and Riverdale	Acme Steel Co.			430,000
Chicago	Atchison, Topeka & Santa Fe Railroad Co.			7,500
Chicago	Chicago Steel & Wire Co.[1]			
"	A. Finkl & Sons [2]			
"	Illinois Nail Co.[3]			
"	Ingersoll Steel & Disc Co.			22,500
"	Interlake Iron Corp.	421,200		
"	International Harvester Co.	642,600	807,000	480,000
"	Joslyn Mfg. & Supply Co.			9,600
"	Clayton Mark & Co.[4]			
"	Sellers Mfg. Co.			150,000
"	Trojan Electric Steel Co.[5]		2,000	
"	Wyckoff Drawn Steel Co.[6]			
Chicago Heights	American Locomotive Co.		105,000	50,000
Chicago Heights	Columbia Tool Steel Co.		4,000	4,000
Cicero	Taylor Forge & Pipe Works [7]			
Clearing	Continental Can Co.[8]			
Granite City	St. Louis Gas & Coke Corp.[5]	400,000		
Harvey	Bliss & Laughlin [9]			
70 Joliet	Phoenix Mfg. Co.			16,000
Peoria	Keystone Steel & Wire Co.		205,000	170,000
Sterling	Northwestern Barbed Wire Co.[10]			
Waukegan	Cyclone Fence Co.[11]			

[1] 8,500 tons wire
[2] 15,000 tons miscellaneous products
[3] 780 tons nails
[4] 202,000 tons pipe
[5] Idle. Source: *Iron & Steel Works Directory*, 1935.
[6] 40,700 tons cold drawn bars
[7] 13,200 tons pipe
[8] 100,000 tons tin plate
[9] 80,400 tons cold drawn bars
[10] 180,000 tons plain wire
[11] 66,000 tons wire goods and fencing. Subsidiary of U. S. Steel Corp.

The following table contrasts the capacity of the reported plants to produce the principal products with the total capacity of all plants in Illinois:

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants:	5,611,000	7,357,800	5,286,650
Total capacity of reported plants:	4,147,200	6,234,800	3,947,050

The reported plants account for approximately 75 per cent of the State's capacity to produce pig iron, 85 per cent of the ingot capacity and 75 per cent of the hot rolled capacity. It should be noted, however, that a large part of the non-reported capacity is possessed by the International Harvester Company which produces steel for its own purposes (R 218). The same thing is no doubt true of the Atchison, Topeka and Santa Fe Railroad Company, the American Locomotive Company, and the Continental Can Company. It should also be noted that the St. Louis Gas and Coke Corporation is listed as idle. When allowance is made for these concerns, it is seen that the coverage of the reported plants is very large.

The industry in Illinois is centered in and around Chicago with a minor concentration in the neighborhood of St. Louis, Missouri. The wage survey is representative of the geographical distribution of the plants. The survey is also representative of the products of the industry produced in Illinois. Wire, nails and fencing are produced in reported plants, as well as pig iron, ingots and hot rolled products.

The wage survey for Illinois includes both large and small plants and companies. The Carnegie-Illinois operates an enormous plant at South Chicago and a large plant at Joliet. The Youngstown Sheet and Tube Company has a large pig iron plant in the Chicago area and the Republic Steel Company, a moderately-sized plant at South Chicago and a very small plant in the western part of the State, at Moline. The American Steel and Wire Company has plants at DeKalb, Joliet and Waukegan. The Inland Steel Company operates a small plant at Chicago Heights. Those are the large companies, all of which have reported wage data for their Illinois plants. A number of small com-
71 panies have reported, the Laclede Steel Company, Wilson Steel and Wire Company, the Calumet Steel Company, and the Granite City Steel Company. The survey for Illinois contains a very representative sampling of the industry by size of company and plant, by product, by location and an exceptionally high coverage of the workers employed in the industry.

Wage data for 10 plants located in Indiana have been received by the Board in response to the notice of these proceedings. The following table gives us the location, name, and the capacity to produce for each of the plants for which wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Anderson	American Steel & Wire Co.			105,000
East Chicago	Youngstown Sheet & Tube Co.	561,600	960,000	714,000
Elwood	Carnegie-Illinois Steel Corp.[1]			77,800
Gary (2 plants)	Carnegie-Illinois Steel Corp.	3,493,100	5,243,000	3,714,300
Gary	National Tube Co.			345,900
Indianapolis	Chapman Price Steel Co.[2]			
Indianapolis	Continental Steel Corp.			44,600
Indiana Harbor	Inland Steel Co.	1,003,000	2,000,000	1,516,000
Kokomo	Continental Steel Corp.		280,000	210,000

[1] 153,500 tons tin plate
[2] 50,000 tons black and galvanized sheets

No reports were received from companies operating the following 9 plants located in the State. Their location, name and productive capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Crawfordsville	Mid-States Steel & Wire Co.[1]			
Ft. Wayne	Joslyn Mfg. & Supply Co.			38,400
Gary	Union Drawn Steel Co.[2]			
Hammond	LaSalle Steel Co.[3]			
Indiana Harbor	Standard Forgings Co.[4]			
Kokomo	Kokomo Nail & Brad Co.[5]			
Muncie	Indiana Steel & Wire Co.[6]			
New Castle	Ingersoll Steel & Disc. Co.		13,200	50,000
Terre Haute	Highland Iron & Steel Co.			48,300

[1] 38,000 tons plain wire
[2] 80,400 tons cold drawn products
[3] 100,000 tons cold drawn bars
[4] 70,000 tons railroad axles
[5] 4,200 tons nails and brads
[6] Capacity not given

73 The following table contrasts the capacity of the reported plants to produce the principal products with the total capacity of all plants in Indiana.

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants:	5,057,700	8,496,200	6,864,300
Total capacity of reported plants:	5,057,700	8,483,000	6,727,600

No more than a glance at the comparison above is needed to show the practically complete coverage of the reported plants in terms of capacity to produce the principal products of the industry. This indicates the large coverage of the iron and steel workers in Indiana by the wage data in the record.

The principal center of the industry is in the Gary neighborhood and there is a moderate development of the industry in the central part of the State around Indianapolis and Kokomo. The reported plants give us a representative view of the geographical distribution of the plants.

With regard to size of company and plant, the reported plants account for all of the large scale operations and companies. At Gary is located an enormous producing center owned by Carnegie-Illinois. The Inland Steel Company has a large plant at Indiana Harbor and the Youngstown Sheet and Tube Company, a large plant at East Chicago. These are the largest companies and plants in Indiana. However, among the reported companies are the smaller Continental Steel Company and the Chapman Price Steel Company. The non-reported companies are all small. A majority produce specialties, such as wire and nails. Only one non-reported plant has capacity to produce steel ingots and these in a small amount.

We have no doubt from the comparison of the reported plants with the non-reported plants in Indiana that the wage data in the record for the State are exceptionally complete in its coverage of workers employed in the industry and that the survey is representative in all essential respects.

Iowa

No information was received from the Keokuk Electro-Metals Company in response to the notices given to it of

the proceedings. This company accounts for the entire iron and steel capacity of the State. It has a capacity to produce 15,000 tons of ferro-silicon.

74 *Kentucky*

Wage data for 2 plants located in Kentucky have been received by the Board in response to the notices of the proceedings. The following table gives us the location, name, and the capacity to produce for the two plants for which wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Ashland	American Rolling Mill Co.	255,900	553,400	373,000
Newport	Andrews Steel Co.		360,000	90,000

No reports were received from the other 2 plants located in the State. They are the Newport Rolling Mill at Newport which has a capacity to produce 180,000 tons of finished hot rolled products, and the Ewald Iron Company at Louisville which has a capacity to produce 12,000 tons of finished hot rolled products.

The 2 non-reported works account for the smaller portion of the productive capacity of the Kentucky plants. The reported plants produce 100% of the pig iron and steel ingots in the State and approximately 70% of the finished hot rolled products. The wage data in the record are adequate to give a picture of the industry in Kentucky in every respect.

Maine

No information was received from the Bancroft and Martin Rolling Mills in response to the notices given to it of the proceedings. This company accounts for the entire iron and steel capacity of the State. It has a capacity to produce 18,000 tons of finished hot rolled products.

Maryland

Wage data for 3 plants located in Maryland have been received by the Board in response to the notices of these proceedings. The following table gives us the location,

name, and the capacity to produce for each of the plants for which wage data have been reported:

75

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Baltimore	Eastern Rolling Mill Co.			90,000
Baltimore	Rustless Iron & Steel Corp.		23,000	14,000
Sparrows Point	Bethlehem Steel Corp.	1,663,200	2,467,000	1,458,000

No reports were received from companies operating the other 3 plants located in the State. All three of these plants are located in Cumberland. One of them, The N. & G. Taylor Company, has a capacity to produce 22,000 tons of finished hot rolled products. Another, The Cumberland Steel Company, has a capacity to produce 72,000 tons of shafting and the third, The B. & O. Railroad Company, has a capacity to produce 10,000 tons of finished hot rolled products.

It is clear that the reported plants account for all but a small fraction of the Maryland capacity to produce the principal products of the industry. The entire pig iron and steel ingot capacities for the State are shown for two of the three reported works. Approximately 98% of the finished hot rolled products capacity is accounted for by the reported plants.

The largest plant in Maryland, and one of the largest in the country, the Bethlehem Steel Company at Sparrows Point, has reported its wage data. The other two plants are located in the same area. These plants are both small. The reported plants are concentrated at Baltimore but in view of the smallness of the distance between centers, we believe that the geographic coverage is satisfactory, especially in view of the predominance of the Baltimore area in the Maryland industry. The data for Maryland are adequate and representative judged by the various criteria which we are using to appraise the wage survey.

Massachusetts

Wage data for 8 plants located in Massachusetts have been received by the Board in response to the notices of these proceedings. The following table gives us the loca-

tion, name, and the capacity to produce for each of the plants for which wage data have been reported:

76

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Holyoke	Geo. W. Prentiss & Co.[1]			
Wareham	Tremont Nail Co.[2]			
Worcester (3 plants)	American Steel & Wire Co.		190,000	177,500
Worcester	Johnson Steel & Wire Co.[3]			
Worcester	Worcester Pressed Steel Co.[4]			
Worcester	G. F. Wright Steel & Wire Co.[5]			

[1] 8,400 tons wire
[2] 3,000 tons nails
[3] 10,000 tons wire
[4] 6,750 tons cold rolled strip
[5] 13,000 tons wire

No reports were received from companies operating the following 12 plants located in the State. Their location, name and productive capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Boston	Northern Steel Co.			12,500
Boston	Thompson Wire Co.[1]			
Clinton	Wickwire-Spencer Steel Co.[2]			
Everett	Mystic Iron Co.	165,000		
Mansfield	New England Drawn Steel Co.[3]			
Millbury	New England High Carbon Wire Co.[4]			
Palmer	Wickwire-Spencer Steel Co.[5]			
Readville	Compressed Steel Shafting Co.[6]			
Worcester	National Standard Co.[7]			
Worcester	Thompson Wire Co.[8]			
Worcester (2 plants)	Wickwire-Spencer Steel Co.[8]			

[1] 14,000 tons wire and cold rolled strip
[2] 12,700 tons miscellaneous products
[3] 11,400 tons cold drawn bars
[4] 7,800 tons wire
[5] 48,000 tons wire
[6] 5,000 tons cold drawn bars
[7] 9,900 tons wire
[8] 30,000 tons wire

77 The plants in Massachusetts are devoted primarily to the production of specialty products, such as wire and nails. The reported plants are representative of this

type of production. The only pig iron plant in the State has not reported. The production of ingots is accounted for entirely by reported plants and the production of hot rolled products is almost entirely accounted for. The plants in Massachusetts are all small. The large company operating in the State, the American Steel and Wire Company, has reported wage data for its plants. While the wage survey is not as complete for Massachusetts as has been the case in most of the other important producing states, we feel that the data in the record for this State give us an adequate and representative sample judged in terms of numbers of workers employed, plant location, size of company and plant, and nature of product with the exception of pig iron.

Michigan

Wage data for 7 plants located in Michigan have been received by the Board in response to the notices of these proceedings. The following table gives us the location, name, and the capacity to produce for each of the plants for which wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Dearborn	Detroit Seamless Tubes Co.			25,800
Detroit	Detroit Steel Corp.[1]			
Detroit (3 plants)	Great Lakes Steel Corp.	360,200	920,000	950,000
Monroe	Republic Steel Corp.[2]			200,000
Newberry	Newberry Lumber & Chemical Co.	29,000		

[1] 123,000 tons cold rolled strip

[2] Reported in the *Iron and Steel Works Directory*, 1935, as the Newton Steel Co.

78 No reports were received from companies operating the following 13 plants located in the State. Their location, name and productive capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Adrian	American Cable Co., Inc.[1]			
Dearborn	Bopp Steel Corp.[2]			
Dearborn	Ford Motor Co.	550,000	1,091,475	356,100
Detroit	Automatic Products Co.[3]			
Detroit	Rotary Electric Steel Co.		100,000	80,000
Detroit	McLouth Steel Corp.			50,000
Ferndale	Steel & Tubes, Inc.[4]			
Jackson	Jackson Fence Co.[5]			
Marquette	The Cleveland-Cliffs Iron Co.[6]	36,000		
Mancelona	Antrim Iron Co.	23,700		
South Lyon	Michigan Seamless Tube Co.			8,000
Sturgis	Formed Tubes, Inc.[1]			
Wells	Delta Chemical & Iron Co.	24,000		

[1] Capacity not given
[2] 16,500 tons cold rolled strip
[3] 15,000 tons cold drawn bars
[4] 13,000 tons tubes. Subsidiary of Republic Steel Corp. Source: *Moody's Industrials*, 1938.
[5] 13,400 tons wire fence
[6] Last operated in 1931. Source: *Iron & Steel Works Directory*, 1935.

The following table contrasts the capacity of the reported plants to produce the principal products with the total capacity of all plants in Michigan:

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants:	1,022,900	2,111,475	1,669,900
Total capacity of reported plants:	389,200	920,000	1,175,800

79 The discrepancy between the capacity figures for the reported works when compared with the total productive capacity of the industry in Michigan is accounted for to a large extent by the producing capacity of the Ford Motor Company. Assuming that all or a large part of the Ford Motor Company production is for the company's own use in automobile manufacture, (R. 218), the statistics for the State may be considered as substantial in their coverage of the works producing iron and steel for the open market. Exclusive of the capacity of the Ford Company, the reporting plants account for approximately 80% of the capacity to produce pig iron and 90% of the capacity to produce steel ingots, and finished hot rolled

products. The wage data in the record give us a high degree of coverage of the workers employed in the Michigan iron and steel plants. A producer of a specialty product is included among the reported plants. The Michigan industry centers in and around Detroit, but there is some development in the smaller communities. Our wage sample gives us some indication of the wages in the outlying districts as well as a thoroughgoing view of the Detroit vicinity. The largest producer for the open market in the State, The Great Lakes Steel Corporation, has reported for its plants, and the Republic Steel Corporation has reported for its small plant at Monroe. The other reported companies are small. We believe that the wage data in the record for Michigan are adequate judged by the criteria used here.

Minnesota

Wage data for one of the two plants located in Minnesota have been received by the Board in response to the notices of these proceedings. This is the American Steel & Wire Company's Duluth works which has a capacity to produce 300,000 tons of steel ingots and steel for castings and 220,000 tons of finished hot rolled products. No data have been received from the Interlake Iron Corporation at West Duluth. This plant has a capacity to produce 113,400 tons of pig iron.

Missouri

Wage data for two plants located in Missouri have been received by the Board in response to the notices of these proceedings.

Both of the reported plants are owned by the Sheffield Steel Corporation. One, located at Kansas City, has a capacity to produce 232,400 tons of steel ingots and steel for castings and 240,200 tons of finished hot rolled products. The other, located at St. Louis, has a capacity to produce 204,100 tons of steel ingots and steel for castings and 206,600 tons of finished hot rolled products.

No reports were received from companies operating the following 5 plants located in the State. Their location, name and productive capacities are as follows:

80

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Kansas City	Union Wire Rope Corp.[1]			
St. Louis	Mississippi Valley Iron Co.[2]	125,000		
St. Louis	Missouri Rolling Mill Corp.			70,000
St. Louis	St. Louis Screw & Bolt Co.			15,000
St. Louis	Scullin Steel Co.		58,900	

[1] 7,500 tons wire
[2] Idle. Source: Iron and Steel Works Directory, 1935

The following table contrasts the capacity of the reported plants to produce the principal products with the total capacity of all plants in Missouri:

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants:	125,000	495,400	531,800
Total capacity of reported plants:		436,500	446,800

The statistics in the record for Missouri give us a good coverage in terms of capacities to produce. Since the only plant having a capacity to produce pig iron is listed as being idle, we may eliminate that product from our consideration in evaluating the coverage afforded by the two reported plants. They account for approximately 90 per cent of the State's capacity to produce steel ingots and 85 per cent of the capacity to produce hot rolled products. The reported plants are representative of the Missouri industry in so far as product and geographic distribution are concerned. The reported plants are moderate in size and the operating company is moderately large. This company, the Sheffield Steel Corporation, is a subsidiary of the American Rolling Mill Company. With the exception of the small company criterion, the data in the record for Missouri are representative of the industry in the State.

New Jersey

Wage data for 5 plants located in New Jersey have been received by the Board in response to the notices of these proceedings. The following table gives us the location,

name, and the capacity to produce for each of the plants for which wage data have been reported:

81

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Dover	Ulster Iron Works			16,000
Harrison	Crucible Steel Co. of America		86,700	82,000
Jersey City	Crucible Steel Co. of America [1]			
Kenilworth	Carpenter Steel Co.[2]			
Trenton	American Steel & Wire Co.[3]			

[1] 3,300 tons wire and 5,4000 tons cold rolled strip
[2] Capacity not given.
[3] 28,170 tons wire

No reports were received from companies operating the following 14 plants located in the State. Their location, name and productive capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Bayonne	International Nickel Co.[1]			
Camden	Camden Forge Co.[2]			
Clifton	Athenia Steel Co.[3]			
Jersey City	Ames & Co.			25,000
Morristown	Drivef Harris Co.		2,970	
Newark	Heller Bros. Co.[1]			
Newark	Igoe Bros.[4]			
Newark	Stewart Hartshorn Co.[5]			
Newark	U. S. Steel & Wire Co.[1]			
New Brunswick	Webb Wire Works [6]			
Rockaway	Rockaway Rolling Mill			15,000
Trenton	Crescent Insulated Wire & Cable Co.[7]			
Trenton	John A. Roeblings Sons Co.		190,000	145,000
Union	Hind Steel Co.[8]			

[1] Capacity not given.
[2] 40,000 tons finished steel
[3] 4,000 tons cold rolled strip
[4] 18,000 tons plain wire
[5] 3,000 tons wire
[6] 420 tons wire
[7] 9,000 tons cold rolled strip
[8] 2,400 tons cold rolled strip

The following table contrasts the capacity of the reported plants to produce the principal products with the total capacity of all plants in New Jersey:

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants:		279,670	283,000
Total capacity of reported plants:		86,700	98,000

83 The plant with the largest capacity in New Jersey has not been reported, and the coverage of the wage data is not as complete as it has been found to be in most of the other states. A majority of the plants in New Jersey produce specialty products, such as wire and cold rolled strip. The wage sample in the record is representative of these products as well as of the principal products of the industry. New Jersey has no pig iron capacity. Both large and small companies have reported their wage data. Although the wage survey is not as extensive in terms of numbers of workers as in other states, we feel that the samplo for New Jersey is sufficiently large and representative to give us a view of the minimum wage structure of the iron and steel industry in the State.

New York

Wage data for 15 plants located in New York have been received by the Board in response to the notices of these proceedings. The following table gives us the location, name, and the capacity to produce for each of the plants for which wage data have been reported:

		Annual Tonnage Capacity		
Location	Name of Company	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Buffalo	Hanna Furnace Corp.	674,700		
Buffalo	Republic Steel Corp.	450,000	566,000	351,000
Cohoes	Cohoes Rolling Mill Co.			30,000
Lackawanna	Bethlehem Steel Co.	1,490,400	2,370,000	1,649,000
Lockport	Simonds Saw & Steel Co.		12,000	6,850
N. Tonawanda	Buffalo Bolt Co.			65,000
N. Tonawanda	Tonawanda Iron Corp.	162,000		
Standish	Chateaugay Ore & Iron Co.	100,000		
Syracuse	Crucible Steel Co of America		51,700	30,000
Syracuse	Crucible Steel Co of America		15,000	7,445
Syracuse	Eckels-Nye Steel Co.			10,200
Tonawanda	Buffalo Steel Co.			36,000
Troy	Burden Iron Co.			24,000
84 Troy	Rail Joint Co.			10,000
Troy	Troy Furnace Co.	150,000		

No reports were received from companies operating the following 17 plants located in the State. Their location, name and productive capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Auburn	Tuttle Rolling Mill [1]			2,400
Brooklyn	Jackson Tube Co.[2]			
Brooklyn	Steel & Tubes, Inc.[3]			
Buffalo	Bliss & Laughlin [4]			
Cortland	Wickwire Bros.		42,000	37,200
Dunkirk	Ludlum Steel Co.		15,000	13,000
Elmira	Elmira Steel Products Co.[2]			
New York	Metal & Thermite Corp.[5]			
Niagara Falls	Electro-Metallurgical Co.[2]			
Niagara Falls	Pittsburgh Metallurgical Co., Inc.	30,000		
Niagara Falls	Titanium Alloy Mfg. Co.	5,000		
Niagara Falls	Vanadium Corp. of America	40,000		
Port Henry	Witherbee Sherman Corp.[6]	288,000		
Rome	Rome Mfg. Co.[7]			
Rome	Rome Strip Steel Co.[8]			
85 Tonawanda	Wickwire-Spencer Steel Co.	324,000	150,000	125,000
Watervliet	Ludlum Steel Co.		23,000	15,600

[1] Last operated in 1931; Source: *Iron & Steel Works Directory*, 1935
[2] Capacity not given.
[3] 15,000 tons electric-weld tube. Subsidiary of Republic Steel Corp.
[4] 53,600 tons cold drawn bars. Source: *Moody's Industrials*, 1938
[5] Works at San Francisco, E. Chicago, and 2 in New Jersey. No capacities given.
[6] Operated by Republic Steel Corp. Source: *Moody's Industrials*, 1938.
[7] 10,000 tons tubing
[8] 9,000 tons cold rolled strip

The following table contrasts the capacity of the reported plants to produce the principal products with the total capacity of all plants in New York:

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants:	3,714,100	3,244,700	2,412,695
Total capacity of reported plants:	3,027,100	3,014,700	2,219,495

The principal center of production in New York is in and around Buffalo. Seven of the reported works are located in this area. Another center of production is in the north central part of the State in and around Syracuse and Troy. Seven reports have been received from this area. Thus, 14

of the 15 reported plants are located within the two principal producing centers of New York State.

The companies reporting wage data range from the largest to the smallest, including all degrees of size. The same is true with regard to plants. The very large plant of the Bethlehem Steel Company and the large plant of the Republic Steel Corporation have been reported as have such plants as the Buffalo Steel Company and the Burden Iron Company. Among the reported plants there are none in which specialty products are produced exclusively, but the reported plants are representative of these specialty products as well as the principal products of the industry. We have no doubt as to the representative nature of the wage data for New York and, in view of the fact that the reported plants account for over 80 per cent of the pig iron capacity and over 90 per cent of the ingot and hot rolled capacity, we believe that the wage data in the record are inclusive of a very high proportion of the workers in the New York plants.

86 *Ohio*

Wage data for 46 plants located in Ohio have been received by the Board in response to the notices of these proceedings. The following table gives us the location, name and the capacity to produce for each of the plants for which wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Canton	Carnegie-Illinois Steel Corp.			65,100
Canton (2 plants)	Republic Steel Corp.[1]	210,000	1,053,000	683,000
Canton	Superior Sheet Steel Co.			72,000
Canton, Gambrinus & Wooster	Timken Steel & Tube Co.[2]		340,000	236,833
Cambridge (2 plants)	Carnegie-Illinois Steel Corp.			95,900
Campbell	Youngstown Sheet & Tube Co.	1,958,400	1,320,000	1,204,000
Cleveland (6 plants)	American Steel & Wire Co.	472,700	600,000	523,000
Cleveland (2 plants)	Otis Steel Co.[2]	430,000	872,000	495,000
Cleveland	Republic Steel Corp.	1,040,000	1,400,000	399,000
Columbus	American Rolling Mill Co.	258,600		
Dover	Reeves Steel & Mfg. Co.			50,000
Hamilton	Hamilton Coke & Iron Co.[3]	182,500		
Hubbard	Youngstown Sheet & Tube Co.	313,200		
87 Jackson	Globe Iron Co.	90,000		
Lorain	National Tube Co.	1,215,000	1,500,000	1,135,000
McDonald	Carnegie-Illinois Steel Corp.[4]			893,100
Marion	Pollak Steel Co.			40,000
Martins Ferry	Carnegie-Illinois Steel Corp.			92,000
Martins Ferry	Wheeling Steel Co.	118,300		36,000
Massillon	Republic Steel Corp.	230,000	523,000	378,000
Middletown	American Rolling Mill Co.		660,400	320,400
Mingo Junction	Carnegie-Illinois Steel Corp.	715,700	600,000	65,000
Newark	Buckeye Rolling Mill Co.			25,000
Niles	Republic Steel Corp.			96,000
Portsmouth	Wheeling Steel Co.	210,200	500,000	378,000
Steubenville	Weirton Steel Co.			83,000
Steubenville	Wheeling Steel Co.	459,900	750,000	185,000
Warren	Republic Steel Corp.		656,000	621,000
Yorkville	Wheeling Steel Co.			108,000
Youngstown	Carnegie-Illinois Steel Corp.	1,500,000	1,700,000	283,000
Youngstown	Fitzsimmons Co.[5]			
88 Youngstown	Republic Steel Corp.	980,000	1,523,000	979,000
Youngstown and Lowellville	Sharon Steel Corp.	155,000		75,700
Youngstown	Youngstown Sheet & Tube Co.	464,400	840,000	204,000
Zanesville	American Rolling Mill Co.			43,000

[1] Includes data for the Canton Tinplate Corp. See *Moody's Industrials*, 1938.

[2] The Steel Workers' Organizing Committee reports a union agreement.

[3] Now a division of the American Rolling Mill Co. Source: *Moody's Industrials*, 1938.

[4] Listed in the 1935 *Iron and Steel Works Directory*. No wage data have been reported for this plant in these proceedings.

[5] 32,148 tons cold drawn bars

No reports were received from companies operating the following 29 plants located in the State. Their location, name and productive capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Ashtabula	Empire Sheet & Tin Plate Co.			46,500
Bedford	Cuyahoga Steel & Wire Co.[1]			
Berea	Cleveland Cold Rolling Mills [2]			
Canton	Barium Stainless Steel Co.		10,000	
Cleveland	Davey Steel Co.			36,000
Cleveland	Steel & Tubes, Inc.[3]			
89 Cuyahoga Falls	Falls Hollow Staybolt Co.			8,000
Dover	Greer Steel Co.[4]			
Elyria	Steel & Tubes, Inc.[5]			8,000
Fostoria	Seneca Wire & Mfg. Co.[6]			
Ironton	Marting Iron & Steel Co.[7]	150,000		
Jackson	Jackson Iron & Steel Co.	45,000		
Leetonia	Pittsburgh Coke & Iron Co.	164,000		
Mansfield	Empire Sheet & Tin Plate Co.		325,000	111,500
Marietta	Robertson Steel & Iron Co.[8]			45,000
Massillon	Union Drawn Steel Co.[9]			
Newton Falls	Newton Steel Co.[10]			140,000
Niles	Empire Sheet & Tin Plate Co.			74,000
Niles	Mahoning Valley Steel Co.			65,000
Philo	Ohio Ferro-Alloys Corp.	17,500		
Shelby	Ohio Seamless Tube Co.[11]			
90 Struthers	Struthers Iron & Steel Co.[8]	151,000		
Toledo	Interlake Iron Corp.	513,000		
Toronto	Follansbee Bros. Co.		110,000	73,900
Warren	Brainard Steel Corp.[12]			
Warren	Steel & Tubes, Inc.[13]			
Warren	Thomas Steel Co.[14]			
Warren	Trumbull Cliffs Furnace Co.	60,000		
Youngstown	Cold Metal Process Co.[15]			

[1] 8,600 tons wire
[2] 500 tons cold rolled strip
[3] 55,000 tons tube and tubing. Subsidiary of Republic Steel Corp. Source: Moody's Industrials, 1938.
[4] 58,800 tons cold rolled sheets
[5] 25,000 tons cold rolled strip. Subsidiary of Republic Steel Corp. Source: *Moody's Industrials*, 1938.
[6] 28,700 tons wire
[7] Dismantled. Source: *Iron & Steel Works Directory*, 1935.
[8] Idle. Source: *Iron & Steel Works Directory*, 1935.
[9] 125,000 tons cold drawn products
[10] Subsidiary of Republic Steel Corp. Source: *Moody's Industrials*, 1938
[11] 48,000 tons seamless tubes
[12] 24,500 tons cold rolled strip
[13] 12,000 tons electric weld tubes. Subsidiary of Republic Steel Corp. Source: *Moody's Industrials*, 1938.
[14] 45,000 tons cold rolled strip
[15] 180,000 tons cold rolled strip

The following table contrasts the capacity of the reported plants to produce the principal products with the total capacity of all plants in Ohio:

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants:	11,504,400	15,772,800	10,471,933
Total capacity of reported plants:	10,103,900	14,837,400	9,864,033

The inclusive nature of the wage survey for Ohio is apparent from this comparison of capacity figures. 87.8 per cent of pig iron capacity, 94.1 per cent of ingot capacity, and 94.2 per cent of finished hot rolled products capacity is accounted for by the reported plants. It should be noted that we have not been able to assign to any specific plant or plants the capacity to produce 490,400 tons of ingots. Our analysis of the capacity figures in the 1935 Directory did not show which plant or plants had such capacity but in view of the large coverage of ingot capacity by the reported plants we do not believe that this relatively small discrepancy is a material matter.

All of the large companies operating in Ohio have
91 reported their wage data, and the large integrated plants are covered completely by the wage data in the record. Small companies and small plants are also covered by the Statistics. A number of small companies operating small specialty plants and small plants with capacity only for finished hot rolled products have not reported wage data. Reports were not received for the moderately sized plant of the Empire Sheet and Tin Plate Company nor for the small plant of Follansbee Bros. Co. both of which have ingot capacity. Two pig iron producers with moderate capacity, the Interlake Iron Corporation and the Trumbull Cliffs Furnace Co., have not reported.

Despite these non-reporting companies, however, the wage survey for Ohio is extraordinarily complete in its coverage of the companies and plants. Furthermore the factors of size of company and plant, products, and geographic locations are thoroughly representative of the Ohio iron and steel industry.

Oklahoma

Wage data for one plant located in Oklahoma have been received by the Board in response to the notices of these proceedings. This company accounts for the entire iron and steel capacity of the State. It is the Sheffield Steel Corporation, located at Sand Springs, and it has a capacity to produce 50,000 tons of steel ingots and steel for castings and 35,000 tons of finished hot rolled products.

Oregon

No information was received from the Steel Tank and Pipe Company of Oregon in response to the notices given to it of these proceedings. This company accounts for the entire iron and steel capacity of the State. It has a capacity to produce 1,500 tons of electric weld pipe.

Pennsylvania

Wage data for 79 plants located in Pennsylvania have been received by the Board in response to the notices of these proceedings. The following table gives the location, name, and the capacity to produce for each of the plants for which wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity		
		Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Allenport	Pittsburgh Steel Co.[1]			
Allentown	American Steel & Wire Co			105,000
Aliquippa	Jones & Laughlin Steel Corp.	1,566,000	1,449,000	1,270,000
Apollo	Apollo Steel Co.			120,000
Berwick	American Car & Foundry Co.			48,000
Bessemer	Carnegie-Illinois Steel Corp.	2,200,000	1,445,000	784,000
Bethlehem	Bethlehem Steel Co.	1,231,200	1,813,600	1,367,600
Birdsboro	Brooke Iron Co.	132,000		
Brackenridge and Leechburg	Allegheny Steel Co.[2]		482,000	514,200
Braeburn	Braeburn Alloy Steel Corp.		5,040	3,000
Burnham	Logan Iron & Steel Co.			45,000
Butler	American Rolling Mill Co.		553,400	370,000

[1] 240,000 tons seamless tubes.

[2] Includes data for the West Leechburg Steel Co. Reported by the Steel Workers' Organizing Committee.

Chester	South Chester Tube Co.[3]			
Clairton (2 plants)	Carnegie-Illinois Steel Corp.	544,000	720,000	525,000
Coatsville	Bethlehem Steel Co.			30,000
"	Lukens Steel Co.		840,000	441,000
Conshohocken (3 plants)	Alan Wood Steel Co.	406,080	660,000	238,000
Danville	Bethlehem Steel Co. (see Steelton)			
Donora (3 plants)	American Steel & Wire Co.	380,000	627,000	320,000
Duquesne	Carnegie-Illinois Steel Corp.	1,371,000	1,510,000	1,021,200[3]
Ellwood City	National Tube Co.			128,600
Erie	Erie Forge Co.		48,000	
"	Erie Forge & Steel Co.		75,000	
Etna	Carnegie-Illinois Steel Corp.	180,300		
Farrell	American Steel & Wire Co.			159,000
"	Carnegie-Illinois Steel Corp.	448,000	800,000	326,300

[3] 62,000 tons pipe.

93

Franklin	Franklin Steel Works			45,000
Glassport	Pittsburgh Steel Co.			35,000
Harrisburg	Central Iron & Steel Co.		300,180	214,300
"	Harrisburg Steel Corp.		77,500	75,000
Irvin	Carnegie-Illinois Steel Corp.[4]			
Johnstown	Bethlehem Steel Co.	1,332,000	1,670,000	1,143,000
"	Carnegie-Illinois Steel Corp.[5]		18,500	
Latrobe	Latrobe Electric Steel Co.		12,000	5,500
Lebanon	Bethlehem Steel Co.			155,000
"	Wrought Iron Co.			75,000
McKeesport	Carnegie-Illinois Steel Corp.			104,000
"	Firth-Sterling Steel Co.		14,500	9,100
"	National Tube Co. (2 plants)	964,000	900,000	674,800
McKees Rocks	Carnegie-Illinois Steel Corp.[6]			56,900
Milton	Milton Mfg. Co.			30,000
Monaca	Pittsburgh Tube Co.[7]			
Monessen	Carnegie-Illinois Steel Corp.[8]			100,000
"	Pittsburgh Steel Co.	480,000	720,000	575,000
Munhall	Carnegie-Illinois Steel Corp.		2,701,500	2,093,900
New Castle	Carnegie-Illinois Steel Corp.	603,500	550,000	235,200
Philadelphia	Henry Disston & Sons		22,700	34,500

[4] Wage data have been reported for this plant in these proceedings. No such plant is listed in the 1935 Iron & Steel Works Directory.

[5] Reported in the 1935 Iron & Steel Works Directory as the Lorain Steel Co.

[6] Listed in the 1935 Iron & Steel Works Directory. No wage data have been reported for this plant in these proceedings.

[7] 73,200 tons pipe.

94

Philadelphia	Ellwood Ivin's Steel Tube Works[8]			
"	Midvale Co.		273,000	65,400
"	Carnegie-Illinois Steel Corp.[4]			
Phoenixville	Phoenix Iron Co.		208,000	173,600
Pine Forge	Pine Iron Works Co.			12,000
Pittsburgh	Carnegie-Illinois Steel Corp.[6]	113,900		
" (5 plants)	Crucible Steel Co. of America[9]	460,000	809,950	691,900
Pittsburgh	Heppenstall Co.		46,600	
"	Jones & Laughlin Steel Corp.	1,434,000	2,222,200	1,567,600
"	Republic Steel Corp.	240,000		100,000
Rankin	American Steel & Wire Co.			115,000
"	Carnegie-Illinois Steel Corp.[6]	1,586,500		
Reading	Carpenter Steel Co.		39,200	28,000
Scottdale	Carnegie-Illinois Steel Corp.			65,900
Sharon	Sharon Steel Corp.		450,000	230,200
Sheridan	Lavino & Co.	36,000		
Steelton	Bethlehem Steel Co.	658,800	660,000	501,500
Vandergrift	Carnegie-Illinois Steel Corp.		340,000	178,000
Washington	Jessop Steel Co.		16,000	8,500
"	Molybdenum Corp. of America[10]			

[4] Wage data have been reported for this plant in these proceedings. No such plant is listed in the 1935 Iron & Steel Works Directory.

[6] Listed in the 1935 Iron & Steel Works Directory. No wage data have been reported for this plant in these proceedings.

[8] 1,350 tons cold drawn seamless tubes.

[9] Includes data for Pittsburgh Crucible Steel Co., and National Drawn Steel Co., Inc.

[10] Capacity not given.

[11] 165,000 tons axles. No wage data have been reported for this plant in these proceedings.

95

West Homestead	Carnegie-Illinois Steel Corp.[11]			
Williamsport	Bethlehem Steel Co.[10]			
"	Sweet's Steel Co.			60,000

No reports were received from companies operating the following 60 plants located in the State. Their location, name and productive capacities are as follows:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Aliquippa	Kidd Drawn Steel Co.[1]			
"	Vulcan Crucible Steel Co.		9,634	2,500
Ambridge	A. M. Byers Co.			122,000
"	Central Tube Co.[2]			
"	Spang, Chalfant & Co.[3]			
"	Wycoff Drawn Steel Co.[4]			
Beaver Falls	Babcock & Wilcox Tube Co.			71,400
"	Moltrup Steel Products Co.[5]			
"	Union Drawn Steel Co.[6]			
Bridgeville	Universal-Cyclops Steel Corp.		52,900	39,468
"	Vanadium Corp. of America	960		
Burnham	Standard Steel Works		142,700	57,000
Butler	Fretz-Moon Tube Co.[7]			
Canonsburg	Canonsburg Steel & Iron Works			35,000

[1] 5,000 tons cold drawn steel
[2] 356,100 tons pipe
[3] 300,000 tons seamless tubes
[4] 95,000 tons cold drawn bars
[5] 72,000 tons cold drawn bars
[6] 53,600 tons cold drawn products
[7] 70,000 tons pipe

96

Canonsburg	Standard Tin Plate Co.			110,000
Carnegie	Superior Steel Corp.			107,000
Catasauqua	Phoenix Mfg. Co.			8,500
Chester	Delaware River Steel Co.[8]	120,000		
Colona	Colonial Steel Co.		52,600	20,000
Columbia	Jamison Steel & Iron Co.			15,000
Corry	McInnes Steel Co.[9]			
Creighton	Penn Iron & Steel Co.			12,000
Danville	American Swede Iron Co.[10]			
"	Reading Iron Co.			35,000
DuBois	Adrian Furnace Co.[8]	85,000		
Ellwood City	Ellwood Steel Corp.[11]			
Erie	Griffin Mfg. Co.[12]			
"	Interlake Iron Corp.	167,400		
Etna	Spang, Chalfant & Co.[13]			
Glassport	Copperweld Steel Co.			15,000
Irvin	National Forge & Ordnance Co.		27,000	
Latrobe	American Locomotive Co.		100,000	60,000
"	Anchor Drawn Steel Co.[14]			
"	Vanadium-Alloys Steel Co.		5,000	3,600
McKeesport	McKeesport Tin Plate Co.			180,000
McKees Rocks	Lockhart Iron & Steel Co.			49,100

[8] Idle. Source: Iron & Steel Works Directory, 1935.
[9] 475 tons bars and forgings
[10] 10,000 tons muck bars
[11] 12,000 tons wire and nails
[12] 25,500 tons cold rolled strip
[13] 225,000 tons pipe
[14] 560 tons cold drawn bars

97

Monaca	Pittsburgh Tool Steel Wire Co.[15]			
Monessen	American Chain & Cable Co.			90,000
Moore	Alloy Metal Wire Co.[16]			
New Brighton	Townsend Co.[17]			
New Castle	Blair Strip Steel Co.[18]			
"	Elliott Bros. Steel Co.[19]			
Oakmont	Edgewater Steel Co.		75,000	51,750
Pencoyd	American Bridge Co.[20]		240,000	222,000
Philadelphia	Nicetown Plate Washer Co.			12,000
Pittsburgh	Mesta Machine Co.		87,500	
Pittsburgh	Pittsburgh Coke & Iron Co.	243,000		
"	Union Electric Steel Corp.[21]			
Pottstown	Reading Iron Co.			12,000
Reading	Reading Iron Co.	130,000		105,000
Riddlesburg	Colonial Iron Co.[8]	72,000		
Sharon	Sharon Tube Co.[22]			
"	Wilkes Rolling Mill[8]			10,000
Sharpsville	Pittsburgh Coke & Iron Co.[8]	150,000		
"	Shenango Furnace Co.	410,000		
"	Shenango-Penn Mold Co.[23]			

[8] Idle. Source: Iron & Steel Works Directory, 1935
[15] 2,000 tons wire
[16] 4,800 tons wire
[17] Wire. No capacity given.
[18] 14,400 tons cold rolled strip
[19] 620 tons cold rolled strip
[20] Subsidiary of U. S. Steel Corp.
[21] Capacity not given.
[22] 5,400 tons pipe
[23] 200,000 tons ingot moulds and stools

98

Spring City	Keystone Drawn Steel Co.[24]			
Titusville	Columbia Tool Steel Co.			4,000
Washington	Washington Tin Plate Co.			22,600
Wheatland	Wheatland Tube Co.[25]			

[24] 8,000 tons cold drawn bars
[25] 138,000 tons pipe

The following table contrasts the capacity of the reported plants to produce the principal products with the total capacity of all plants in Pennsylvania:

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants	17,924,040	23,421,004	18,737,618
Total capacity of reported plants:	16,367,280	23,079,270	17,265,700

This comparison of capacity figures brings out the inclusiveness of the wage survey for Pennsylvania. 91.3 per cent of pig iron capacity, 98.5 per cent of ingot capacity and 92.1 per cent of finished hot rolled capacity is accounted for by the reported plants. In making an analysis of the capacity figures from the 1935 Directory we have come out

with a capacity of 178,400 tons of pig iron and 450,000 tons of ingots assigned to the plants but in excess of the totals given in the Directory. A rechecking of our analysis has not revealed the source of this discrepancy but since it does not amount to more than 1 per cent of the Pennsylvania pig iron capacity and 2 per cent of the ingot capacity we do not believe that the discrepancy is material.

Reports have been received from all of the large and medium-sized companies operating in Pennsylvania. The integrated plants have been completely covered. The survey is thoroughly representative of small companies and small plants. A number of small companies with capacity for only specialty products or finished hot rolled products have reported their wage data.

As we have seen above 60 plants have not been reported on. Over 20 of these plants are limited to the production of specialty products. For the most part they are small with the exception of the Central Tube Company and Spang Chalfant and Company which have moderately large capacity for the production of pipe and seamless tubes. Several of the non-reported plants have small capacity for finished hot rolled products only, and 9 of these plants have small ingot capacity. Three moderately-sized pig iron plants have not reported, the Interlake Iron Corp., the Pittsburgh Coke and Iron Co., and the Shenango Furnace Co. The largest non-reported plant is the Pencoyd plant of the American Bridge Co., a subsidiary of the U. S. Steel Corp. Since the U. S. Steel Corp. has reported for its operations coming within the terms of the definition (R 282) we may assume that the steel operations at the Pencoyd plant are not designed for the open market.

99 Geographically the wage survey for Pennsylvania is entirely representative. The principal producing centers are thoroughly covered and the reports are representative of the smaller centers as well.

We have no doubt that the data for Pennsylvania is adequate and representative to an exceptionally high degree.

Rhode Island

No information was received from the Newman-Crosby Steel Corporation and the Washburn Wire Company in response to the notices given of these proceedings. These

companies account for the entire iron and steel capacity of the State. One, the Newman-Crosby Steel Corporation, is located at Pawtucket and has an annual capacity of 13,000 tons of cold rolled strip. The other, the Washburn Wire Company, is located at Phillipsdale and has an annual capacity of 51,000 tons of steel ingots and steel for castings and 50,000 tons of finished hot rolled products.

Tennessee

No information was received from any of the six plants operating within the iron and steel industry in response to the notices given of these proceedings. The following table gives us the location, name, and the capacity to produce for each of these plants.

		Annual Tonnage Capacity		
Location	Name of Company	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Chattanooga	Roane Iron & Coal Co.[1]	180,000		
"	Southern Ferro-Alloys Co.[2]	72,000		
Cumberland Furnace	Warner Iron Co.[1]	15,000		
Knoxville	Knoxville Iron Co.			80,000
Lyles	Tennessee Products Co.[1]	21,600		
Rockdale	Tennessee Products Co.	21,900		

[1] Idle. Source: Iron and Steel Works Directory, 1935

[2] This company has reported that its operations have always been considered as outside the purview of the industry.

100 Reference to the above table shows that the capacity of the active Tennessee plants is small. Only 2 of 5 plants which produce pig iron are reported to be operating at present, and of these, the Southern Ferro-Alloys Company may be eliminated from consideration in view of its report to the Board. There is no capacity in Tennessee for the production of steel ingots and steel for castings. The only company which manufactures finished hot rolled products is a member of the Rail Steel Bar Association which has reported wage data for this company in a composite form which makes it impossible to use the data for a specific plant.

Texas

No information was received from the Texas Steel Company, located at Fort Worth, in response to the notices given to it of these proceedings. This company accounts

for the entire iron and steel capacity of the State. It has a capacity to produce 6,000 tons of steel ingots and steel for castings and 18,000 tons of finished hot rolled products. The company is a member of the Rail Steel Bar Association which has reported composite wage data for this and two other Southern establishments.

Utah

Wage data for one plant operating within the iron and steel industry have been received by the Board in response to the notices of these proceedings. This company accounts for the entire iron and steel capacity of the State. It is the Columbia Steel Company, located at Ironton, and it has a capacity to produce 172,000 tons of pig iron.

Virginia

Wage data for three plants located in Virginia have been received by the Board in response to the notices of these proceedings. The production capacity of the three plants is as follows:

Lavino & Co., Reusens:
36,000 tons of pig iron and ferro alloys

Old Dominion Iron & Steel Works, Richmond:
2,500 tons of steel ingots and steel for castings
5,000 tons of finished hot rolled products

The Tredegar Co., Richmond:
44,000 tons of finished hot rolled products

There are 5 non-reported plants located in Virginia. All of them are shown by the 1935 Directory as idle and accordingly, the reported plants account for the entire present iron and steel capacity of the State. The location, name, and productive capacities of the non-reported plants
101 are as follows:

Allegheny Ore & Iron Co., Buena Vista:
55,000 tons of pig iron and ferro alloys
Pulaski Iron Co., Pulaski:
90,000 tons of pig iron and ferro alloys
Virginia Iron, Coal & Coke Co., 3 plants at Roanoke:
200,000 tons of pig iron and ferro alloys

Washington

Wage data for one plant located in Washington have been received by the Board in response to the notices of these proceedings. This plant, operated by the Bethlehem Steel Company at Seattle, has a capacity to produce 140,000 tons of steel ingots and steel for castings and 119,000 tons of finished hot rolled products.

There are two non-reported plants located in Washington. One, the Northwest Steel Rolling Mills at Seattle, has a capacity to produce 15,000 tons of steel ingots and steel for castings and 12,000 tons of finished hot rolled products. The other, The Rothert Steel Corporation, also located at Seattle, is shown by the 1935 Directory as idle. It has a capacity to produce 1,800 tons of electric steel ingots.

In view of the relatively large size of the Bethlehem plant and the fact that one of the non-reported plants is no longer in operation, it is evident that the wage data for Washington give us almost the entire employment in the Washington industry.

West Virginia

Wage data for 8 plants located in West Virginia have been received by the Board in response to the notices of these proceedings. The following table gives us the location, name, and the capacity to produce for each of the plants for which wage data have been reported:

Location	Name of Company	Annual Tonnage Capacity: Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Beech Bottom	Wheeling Steel Corp.			72,000
Benwood	Wheeling Steel Corp.	170,800	250,000	140,000
Clarksburg	Weirton Steel Co.			59,000
Huntington	W. Va. Rail Co.			125,000
Morgantown	Carnegie-Illinois Steel Corp.			37,000
Parkersburg	Parkersburg Iron & Steel Co.			32,100
Weirton	Weirton Steel Co.	631,800	1,312,000	811,550
Wheeling	Wheeling Steel Corp.			56,000

No report was received from the Follansbee Bros. Company which has a plant at Follansbee with a capacity to produce 90,000 tons of steel ingots and steel for castings and 73,900 tons of finished hot rolled products, nor from the

International Nickel Company which has a plant at Huntington for which no capacity is given.

The following table contrasts the capacity to produce of the reported plants with the total capacity of all plants in West Virginia:

	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity of all plants:	802,600	1,652,000	1,405,550
Total capacity of reported plants:	802,600	1,562,000	1,331,650

The statistics in the record for West Virginia give us an extraordinarily broad coverage in terms of capacity to produce, and we have no doubt as to the adequacy of the wage data judged by numbers of workers covered or by the other criteria which have been applied above.

103 *Wisconsin*

No information was received from the 3 iron and steel plants located in Wisconsin in response to the notices given of these proceedings. These companies account for the entire iron and steel capacity of the State. Their respective capacities are as follows:

Simmons Co., Kenosha:
40,000 tons of finished hot rolled products
Globe Steel Tubes, Milwaukee:
54,000 tons of finished hot rolled products
Wrought Washer Mfg. Co., Milwaukee:
5,000 tons of finished hot rolled products.

It is very likely that the steel produced by the Simmons Company and by the Wrought Washer Manufacturing Company is used by these companies in later processes of fabrication.

The United States

What we have just surveyed is practically the productive capacity of the iron and steel industry. We have seen in each of the iron and steel producing states to what extent the plants for which wage data are reported in the record account for the capacity to produce, and we have compared reported and non-reported plants in terms of location, size of plant and company, and nature of product.

With these factors as criteria, we have appraised the inclusiveness and the representative nature of the wage data in the record. For the sake of convenient reference the number of plants reported and non-reported are given below for each State, together with the comparative capacity of the reported and non-reported plants to produce the principal products of the industry. This table also gives the total number of reported and non-reported plants in the United States and a summary of the comparative productive capacity of these plants.

State	Iron and Steel Plants in the State: Reported	Non-Reported	Total	CAPACITIES TO PRODUCE THE PRINCIPAL PRODUCTS OF THE INDUSTRY: Pig Iron and Ferro Alloys: Reported	Non-Reported	Total	Steel Ingots & Steel for Castings: Reported	Non-Reported	Total	Finished Hot Rolled Products: Reported	Non-Reported	Total
UNITED STATES	234	227	461	45,175,080	7,361,620	52,715,100 1/	66,079,070	5,311,619	71,431,089 2/	48,194,428	6,031,018	54,225,446
Alabama	14	4	18	3,153,000	161,360	3,314,360	2,212,500	0	2,212,500	1,688,400	60,000	1,748,400
California	5	4	9	0	0	0	603,500	76,500	680,000	459,900	58,200	518,100
Colorado	0	1	1	0	563,000	563,000	0	888,000	888,000	0	663,500	663,500
Connecticut	5	5	10	0	0	0	144,800	0	144,800	92,500	0	92,500
Delaware	1	0	1	0	0	0	378,000	0	378,000	252,000	0	252,000
Georgia	0	1	1	0	0	0	0	137,040	137,040	0	148,500	148,500
Illinois	17	23	40	4,147,200	1,463,800	5,611,000	6,234,800	1,123,000	7,357,800	3,947,050	1,339,600	5,286,650
Indiana	10	9	19	5,057,700	0	5,057,700	8,483,000	13,200	8,496,200	6,727,600	136,700	6,864,300
Iowa	0	1	1	0	15,000	15,000	0	0	0	0	0	0
Kentucky	2	2	4	255,900	0	255,900	913,400	0	913,400	463,000	192,000	655,000
Maine	0	1	1	0	0	0	0	0	0	0	18,000	18,000
Maryland	3	3	6	1,663,200	0	1,663,200	2,490,000	0	2,490,000	1,562,000	32,000	1,594,000
Massachusetts	8	12	20	0	165,000	165,000	190,000	0	190,000	177,500	12,500	190,000
Michigan	7	13	20	389,200	633,700	1,022,900	920,000	1,191,475	2,111,475	1,175,800	494,100	1,669,900

1/ 178,400 tons short.
2/ 40,400 tons short.

(continued)

State	Iron and Steel Plants in the State			CAPACITIES TO PRODUCE THE PRINCIPAL PRODUCTS OF THE INDUSTRY								
				Pig Iron and Ferro Alloys			Steel Ingots & Steel for Castings			Finished Hot Rolled Products		
	Reported	Non-Reported	Total	Reported	Non-Reported	Total	Reported	Non-Reported	Total	Reported	Non-Reported	Total
Minnesota	1	1	2	0	113,400	113,400	300,000	0	300,000	220,000	0	220,000
Missouri	2	5	7	0	125,000	125,000	436,500	58,900	495,400	446,800	85,000	531,800
New Jersey	5	14	19	0	0	0	86,700	192,970	279,670	98,000	185,000	283,000
New York	15	17	32	3,027,100	687,000	3,714,100	3,014,700	230,000	3,244,700	2,219,495	193,200	2,412,695
Ohio	46	29	75	10,103,900	1,400,500	11,504,400	14,837,400	445,600	15,772,800 3/	9,864,033	607,900	10,471,933
Oklahoma	1	0	1	0	0	0	50,000	0	50,000	35,000	0	35,000
Oregon 5/	0	1	1	0	0	0	0	0	0	0	0	0
Pennsylvania	79	60	139	16,367,280	1,378,360	17,924,040 1/	23,079,270	791,734	23,421,004 4/	17,265,700	1,471,918	18,737,618
Rhode Island	0	2	2	0	0	0	0	51,000	51,000	0	50,000	50,000
Tennessee	0	6	6	0	310,500	310,500	0	0	0	0	80,000	80,000
Texas	0	1	1	0	0	0	0	6,000	6,000	0	18,000	18,000
Utah	1	0	1	172,000	0	172,000	0	0	0	0	0	0
Virginia	3	5	8	36,000	345,000	381,000	2,500	0	2,500	49,000	0	49,000
Washington	1	2	3	0	0	0	140,000	16,800	156,800	119,000	12,000	131,000
West Virginia	8	2	10	802,600	0	802,600	1,562,000	90,000	1,652,000	1,331,650	73,900	1,405,550
Wisconsin	0	3	3	0	0	0	0	0	0	0	99,000	99,000

1/ 178,400 tons short.
3/ 490,400 tons short
4/ 450,000 tons additional.
5/ 1,500 tons electric weld pipe.

106 The adequacy of the coverage of the wage data reported in the record has been appraised above for each state at the time of the discussion of the productive capacity of the state. In some states it has been found that the wage data reported give a more thorough coverage and is more representative than is the case in other states. Our sample is not 100 per cent complete but as we said above, it is not essential that this be the case if on the whole the data in the record give an adequate and representative view of the minimum wage structure of the industry. We have no doubt as to the adequacy of the wage data presented above in section IV for this purpose.

For the nation as a whole, 234 of the 461 plants considered to be within the purview of the industry as defined here have reported wage data for the record. These plants account for approximately 85 per cent of the nation's capacity to produce pig iron, 90 per cent of the steel ingot capacity, and 90 per cent of the capacity to produce hot rolled products. In addition to this, the reported plants account for a large portion of the capacity to produce the specialty products which we have noted in the above analysis separately. We have no doubt as to the sufficiency of the wage data in the record to give us an adequate view of the number of workers employed in the industry, the number being paid the various base rates, and the various base rates in the industry.

The geographical distribution of the reported plants is entirely in line with the distribution of the plants in the various producing states. Plants in every section of the country have reported. Only in the least important producing states, as will be seen by reference to the summary above, have no reports been received. For Colorado we have evidence of the base rate from the survey of the Bureau of Labor Statistics.

The matter of the representative nature of the data from the standpoint of size of the plant and the nature of product as judged by the capacity to produce of the reported plants has been discussed at the time each of the states was being considered. While it will be found that the wage sample varies from state to state in the degree to which it is representative of large, medium and small-

sized plants and also varies with respect to the various types of products, the wage sample as a whole is entirely representative of these factors.

In the above survey we have taken each plant as an entity. The matter of plant ownership should also be given attention and in the following table the representative nature of the wage sample is appraised in the light of the size of companies which have reported data and those from which no reports have been received. In view of the fact that we discuss the question of the size of company more at length in Section VIII below we have confined the present medium of comparison to ingot capacity. We have grouped the companies in accordance with their capacity to produce steel ingots and steel for castings in large, medium, and small-sized companies. Large-sized companies are regarded as those with a total productive capacity of 1,000,000 tons or over; medium sized companies as those with a total productive capacity of less than 1,000,000 tons but not less than 300,000 tons; and small-sized companies as those with a total productive capacity of less than 300,000 tons.

The *Iron and Steel Works Directory* for 1935 has been used as the source for the data in this table.

107

Size of Company	Annual Tonnage Capacity	
	Reported Companies	Non-Reported Companies
Large:		
American Rolling Mill Co.[1]	2,244,100	
Bethlehem Steel Co.[2]	9,360,000	
Ford Motor Co.		1,091,475
Inland Steel Co.	2,000,000	
Jones & Laughlin Steel Corp.	3,671,200	
National Steel Corp.[3]	2,232,000	
Republic Steel Corp.[4]	6,529,500	
U. S. Steel Corp.[5]	27,101,900	240,000
Wheeling Steel Corp.	1,500,000	
The Youngstown Sheet & Tube Co.	3,120,000	
Totals	57,758,700	1,331,475
Medium:		
Allegheny Steel Co.[6]		482,000
The Andrews Steel Co.	360,000	
Central Iron & Steel Co.	300,180	
The Colorado Fuel & Iron Co.[7]		888,000
Crucible Steel Co. of America[8]	963,350	

Size of Company	Annual Tonnage Capacity: Reported Companies	Annual Tonnage Capacity: Non-Reported Companies
Empire Sheet & Tin Plate Co.		325,000
Granite City Steel Co.	400,000	

[1] Includes Sheffield Steel Corp. Source: *Moody's Industrials*, 1938.
[2] Includes Pacific Coast Steel Corp.
[3] Includes Great Lakes Steel Corp., and Weirton Steel Co.
[4] Includes Corrigan, McKinney Steel Co., and Gulf States Steel Co.
[5] Includes the American Bridge Co., American Sheet & Tin Plate Co., American Steel & Wire Co., Carnegie Steel Co., Columbia Steel Co., Illinois Steel Co., The Lorain Steel Co., The National Tube Co., and the Tennessee Coal, Iron & Railroad Co. The non-reported plant shown is that of The American Bridge Co., at Pencoyd, Pa.
[6] Base rate reported by the Steel Workers' Organizing Committee.
[7] Base rate estimated from Bureau of Labor Statistics survey.
[8] Includes the Halcomb Steel Co., and the Pittsburgh Crucible Steel Co.

108

Medium:		
International Harvester Co.		807,000
Lukens Steel Co.	840,000	
The Otis Steel Co.[6]		872,000
Pittsburgh Steel Co.	720,000	
Sharon Steel Corp.	450,000	
The Timken Steel & Tube Co.[6]		340,000
Alan Wood Steel Co.	660,000	
Worth Steel Co.	378,000	
Totals	5,071,530	3,714,000
Small:		
American Locomotive Co.		205,000
Atlantic Steel Co.		137,040
Barium Steel Corp.		10,000
Braeburn Alloy Steel Corp.	5,040	
The Carpenter Steel Co.	39,200	
Colonial Steel Co.		52,000
Columbia Tool Steel Co.		4,000
Continental Steel Corp.	280,000	
Henry Disston & Sons, Inc.	22,700	
Driver-Harris Co.		2,970
Edgewater Steel Co.		75,000
Erie Forge Co.	48,000	
Erie Forge & Steel Co.	75,000	
Firth-Sterling Steel Co.	14,500	
Follansbee Bros. Co.		200,000
Harrisburg Steel Corp.	77,500	
Heppenstall Co.	46,600	
Ingersoll Steel & Disc Co.		13,200

[6] Base rate reported by the Steel Workers' Organizing Committee.

109

Size of Company	Annual Tonnage Capacity: Reported Companies	Annual Tonnage Capacity: Non-Reported Companies
Small:		
Jessop Steel Co.[8]		16,000
Judson Steel Corp.		76,500
Keystone Steel & Wire Co.		205,000
Kilby Car & Foundry Co.	10,000	
Laclede Steel Co.	235,400	
Latrobe Electric Steel Co.	12,000	
Ludlum Steel Co.		38,000
Mesta Machine Co.		87,500
The Midvale Co.	273,000	
National Forge & Ordnance Co.		27,000
Northwest Steel Rolling Mills, Inc.		15,000
Old Dominion Iron & Steel Works, Inc.	2,500	
The Phoenix Iron Co.	208,000	
John A. Roebling's Sons Co.		190,000
Rotary Electrical Steel Co.[8]		100,000
Rothert Steel Corp.[9]		1,800
Rustless Iron Corp. of America	23,000	
Scullin Steel Co.		58,900
Simonds Saw & Steel Co.	12,000	
Standard Steel Works Co.		142,700
The Stanley Works	144,800	
Texas Steel Co.[10]		6,000
Trojan Electric Steel Co.[9]		2,000
Tulsa Steel Corp.	50,000	
Universal Steel Co.		52,900
Vanadium-Alloy Steel Co.		5,000

[8] Base rate reported by the Steel Workers' Organizing Committee.
[9] Not in operation.
[10] This company is a member of the Rail Steel Bar Assn., which has reported composite data for three member firms located in the South.

110

Small:		
Vulcan Crucible Steel Co.		9,634
Washburn Wire Co.		51,000
Wickwire Bros., Inc.		42,000
Wickwire-Spencer Steel Co.		150,000
Totals	1,579,240	1,976,144
Grand Totals	64,409,470	7,021,619

From the comparison of companies that have reported wage data for their plants with those that have not, we find that all of the large companies producing steel for the open market have reported. The exception is the Ford Motor Company which, as we have observed before, produces steel for purposes of later fabrication in its own plant. Our wage sample is, consequently, complete in its coverage of the largest companies in the industry.

We have reports in the record from 9 of the 15 companies classified above as medium-sized. For 3 others the base rate has been reported by the Steel Workers' Organizing Committee as the rate established by collective bargaining. For one other medium-sized company we have estimated the base rate from the Bureau of Labor Statistics survey. As a result our wage data in the record for the medium-sized companies are more representative than is shown above. The Allegheny Steel Company, The Colorado Fuel and Iron Company, The Otis Steel Company, and The Timken Steel and Tube Company should be included with the companies for which there are wage data in the record. This increases the capacity of the reported companies to 7,653,530 tons. Actually, we have reports on all but two of the medium-sized companies. The largest of these, the International Harvester Company, produces steel for its own use in later fabrication. It would seem that the coverage of our wage sample is very nearly complete in its inclusion of the medium-sized steel-producing companies.

Despite the efforts made in the course of these proceedings to secure wage data from as many companies in the industry as possible, we find that our coverage of small companies does not include more than one-half of the small companies which have capacity to produce steel ingots. Two companies listed above in the non-reporting column should be included with the companies for which there are wage data in the record. The Steel Workers' Organizing Committee has reported the base rates for these companies.

We have at hand in the record reports on the base rates of 21 of the 48 companies listed above as small producers of steel ingots. While not approaching the coverage of the data in the record for the large and medium-sized plants we believe that a coverage of approximately 45 per cent of such plants gives us an adequate sample, and we conclude that our wage sample is representative of the industry in terms of size of company.

The following table has been constructed from the statistics reported above in section IV. This table gives the various base rates being paid in the industry by the companies which have furnished their wage data for the record, the number of plants which pay each base rate, the total number of workers employed in these plants and the total number of common laborers receiving each base rate:

Base Rates for Common Labor Currently Being Paid in Industry	No. of Iron and Steel Plants Paying Each of the Base Rates	Total No. of Wage Earners Employed by These Plants	Total No. of Common Laborers Receiving Each Base Rate
30.0	1	103	18
34.5 1/	3	653	221
35.3	1	458	125
36.0	1	250	---
36.5	1	2,487	437
38.0	1	342	121
40.0	5	1,355	215
42.0	1	163	9
43.0	2	227	110
45.0	7	7,631	988
46.0	1	300	60
46.5	2	1,008	160
48.0	1	135	24
48.2	1	186	38
48.5	3	523	210
49.0	1	165	38
49.5	1	63	13
50.0	7	1,656	233
50.05	1	178	110
51.0	1	335	23
52.0	2	406	77
52.5	1	130	13
53.0	4	2,312	150
54.0	4	2,451	265
55.0	11	6,746	623
56.0	4	2,710	720
56.25	1	162	25
56.5	21	38,947	3,965
57.0	5	4,005	194
58.0	3	1,666	110
58.5	5	11,005	917
59.5	8	9,745	1,128
60.0	13	7,278	438
60.5	1	750	20
62.5	101	200,466	14,669
63.0	3	4,961	277
63.5	1	501	47

Paid in Industry	Base Rates	These Plants	Base Rate
30.0	1	103	18
34.5 1/	3	653	221
35.3	1	458	125
36.0	1	250	---
36.5	1	2,487	437
38.0	1	342	121
40.0	5	1,355	215
42.0	1	163	9
43.0	2	227	110
45.0	7	7,631	988
46.0	1	300	60
46.5	2	1,008	160
48.0	1	135	24
48.2	1	186	38
48.5	3	523	210
49.0	1	165	38
49.5	1	63	13
50.0	7	1,656	233
50.05	1	178	110
51.0	1	335	23
52.0	2	406	77
52.5	1	130	13
53.0	4	2,312	150
54.0	4	2,451	265
55.0	11	6,746	623
56.0	4	2,710	720
56.25	1	162	25
56.5	21	33,947	3,965
57.0	5	4,005	194
58.0	3	1,666	110
58.5	5	11,005	917
59.5	8	9,745	1,128
60.0	13	7,278	438
60.5	1	750	20
62.5	101	200,466	14,669
63.0	3	4,961	277
63.5	1	501	43
65.0	2	283	11
70.0	1	222	64
Totals 2/	234	313,064	26,887

1/ This base rate, reported by the Rail Steel Bar Assn., is the average of the base rates paid by 3 member concerns located in the South.

2/ Included in these totals is a plant located in Virginia for which no base rate has been reported. This plant employs 100 wage earners of which 25 receive the common labor rate.

112 This table gives us a full-length view of the minimum wages paid in the iron and steel industry. The variation in these minimum rates is wide; the highest minimum is more than double the lowest and from low to high there are 39 different base rates for common labor. But more pronounced than the tendency among the base rates toward diversity is the evidence in the table of uniform minimum wage practice. Two of the 38 base rates account for 122 of the 234 plants. These 122 plants employ 76.5 per cent of all the workers in the wage sample and 69.3 per cent of all the workers classified as common laborers and paid base rate wages.

For the largest segment of the industry there is but one base rate, 62.5 cents an hour. Of the 234 plants, 101 pay this base rate. In these 101 plants are employed 64.0 per cent of all the workers in the wage sample and, what is more important for our purposes, 54.6 per cent of the common laborers in the sample are paid the 62.5-cent rate. These figures would be larger if we had statistics for the following companies reported by the SWOC to be paying the base rate of 62.5 cents an hour under union contract: Allegheny Steel Co., Jessop Steel Co., Otis Steel Co., Rotary Elec. Steel Co., and the Timken Steel & Tube Co. The table also shows that at other base rates there are smaller but substantial concentrations of workers. Eight plants employing 3.1 per cent of all the workers in the sample pay a base rate of 59.5 cents. This rate is paid to 4.2 per cent of the workers classified as common laborers.

Next to the 62.5-base rate, the rate of 56.5 cents is the most outstanding base rate in the table. 21 plants pay 56.5 cents to 14.7 per cent of the workers classified as common laborers. These 21 plants employ 12.4 per cent of all the workers in the wage sample. At lower rates there is no pronounced tendency toward concentration. Minor concentrations will be found at the rates of 56, 55, 54, 53 and 50 cents. Below 50 cents the outstanding concentration takes place at the 45-cent rate. Seven plants pay this rate and these plants employ 2.4 per cent of all the workers in the sample and 3.7 per cent of all the workers classified as common laborers.

We have only to compare the base rates with each other to see that none of the other base rates approaches the 62.5

cent rate in the number of plants in which this rate is paid, in the total number of workers in these plants and in the total number of workers receiving the rate. But the prevailing minimum wage is not to be found as simply as this. Something more than an inspection of the statistical table is required. There are other base rates of lesser but substantial importance below the 62.5 cent rate and we must take into account the wide geographic dispersion of the industry. It is necessary to go behind the statistical table and to look in more detail at the minimum wage structure of the industry.

A variety of economic factors operate to produce both the diversity among the base rates from 30 to 70 cents, and the uniformity at the relatively few points of concentration. Outstanding among these factors are the customs of the community or the region in which a plant is located with respect to the payment of high or low wages, the supply of labor capable of working in iron and steel plants, the competition of other industries in the locality for their labor supply, the nature of the product, the degree of mechanization and the efficiency of a plant, the costs of transporting raw materials and the transportation costs to market, the size of the iron and steel companies and the policy of the companies toward wages, the cost of living in a community, the extent and influence of organized labor in the various communities and regions.

113 Our concern is with the minimum wage structure of the industry as these economic factors have operated to produce it. It is not necessary, however, that we analyze the wage data in the table above in the light of each one of these factors in order to bring out the underlying structure of minimum wages in the industry as it now exists. The geographic location of the plants will reflect several of these wage-making factors, such as the custom of communities and regions, the labor supply, the cost of living, and the costs of transportation. The evidence in the record enables us to relate the various base rates and the location of each plant for which reports have been received. There is also evidence in the record with respect to the size of the companies and the size of the plants, the nature of the product of the various plants, and the degree of unionization in the industry.

In the following table the base rates are again arranged in a series from low to high and adjacent to each base rate is given the locations and names of the plants paying the base rate, together with the total number of workers in the plant and the number classified as common labor receiving the base rate. Following this table the plants paying each of the base rates are described in terms of geographic location, size of company and size of plant, nature of product, and, where a union agreement has been reported for a plant by the Steel Workers' Organizing Committee this fact is noted. The description of the plants in these terms will enable us to relate the diversities and uniformities among the base rates to each other and will guide us in interpreting the statistical table presented above on page 75.

Base Rates for Common Labor Being Paid in the Industry (cents)	Location of Plants Paying Each of the Base Rates	Name of Company Paying Each of the Base Rates	Total No. of Workers in Each Plant	Total No. of Common Laborers in Each Plant Being Paid Base Rate
30.0	Standish, N. Y.	[illegible]augay Ore & Iron Co.	103	18
34.5 1/	Birmingham, Ala. Knoxville, Tenn. Fort Worth, Texas	[illegible]ners Steel Co.) [illegible]xville Iron Co.) [illegible]s Steel Co.)	653	221
35.3	Richmond, Va.	[illegible] Tredegar Co.	458	125
36.0	Anniston, Ala.	[illegible]lby Steel Co.	250	---
36.5	Gadsden, Ala.	[illegible]public Steel Corp.	2,487	437
38.0	Newberry, Mich.	[illegible]berry Lumber & Chemical Co.	342	121
40.0	Birmingham, Ala. " " Woodward, Ala.	[illegible]public Steel Corp. [illegible]se-Sheffield Steel & Iron Co. [illegible]dward Iron Co.	360 423 572	84 44 87
42.0	Cohoes, N. Y.	[illegible]hoes Rolling Mill Co.	163	9
43.0	Reusens, Va. Pine Forge, Pa.	[illegible]. J. Lavino & Co. [illegible]ine Iron Works	175 52	91 19
45.0	Bessemer, Ala. Ensley, Ala. Fairfield, Ala. Pratt City, Ala.	[illegible]nnessee Coal, Iron & Railroad Co.	7,631	988
46.0	Troy, N. Y.	[illegible]urden Iron Co.	300	60

1/ This rate is the average of the base rates paid by the companies shown.

(continued)

46.5	Milton, Pa.	Milton Mfg. Co.	345	6
	Lebanon, Pa.	Wrought Iron Co.	663	154
48.0	Berwick, Pa.	American Car & Foundry Co.	135	24
48.2	Sand Springs, Okla.	Sheffield Steel Corp.	186	38
48.5	Syracuse, N. Y.	Eckels-Nye Steel Co.	80	16
	Lebanon County, Pa.	E. J. Lavino & Co.	180	95
	Williamsport, Pa.	Sweet's Steel Co.	263	99
49.0	Burnham, Pa.	Logan Iron & Steel Co.	165	38
49.5	Wareham, Mass.	Tremont Nail Co.	63	13
50.0	Philadelphia, Pa.	Henry Disston & Sons, Inc.	310	30
	Franklin, Pa.	Franklin Steel Works	212	15
	Parkersburg, W. Va.	Parkersburg Iron & Steel Co.	588	99
	Troy, N. Y.	Troy Furnace Corp.	196	37
	Dover, N. J.	Ulster Iron Works	250	35
	Wallingford, Conn.	Wallingford Steel Co.	---	---
	Worcester, Mass.	Worcester Pressed Steel Co.	100	17
50.5	Tonawanda, N. Y.	Buffalo Steel Co.	178	110
51.0	Marion, Ohio	Pollak Steel Co.	335	23
52.0	Troy, N. Y.	Rail Joint Co.	132	24
	Huntington, W.Va.	W. Va. Rail Co.	274	53
52.5	Branford, Conn.	The Atlantic Wire Co.	130	13
53.0	Apollo, Pa.	Apollo Steel Co.	1,000	60
	Baltimore, Md.	Eastern Rolling Mill Co.	446	78
	Erie, Pa.	Erie Forge Co.	241	3
	" "	Erie Forge & Steel Co.	625	9

(continued)

54.0	Birdsboro, Pa.	H. K. Brooke Iron Co.	215	47
	Harrisburg, Pa.	Central Iron & Steel Co.	1,210	153
	" "	Harrisburg Steel Corp.	779	35
	Baltimore, Md.	Rustless Iron & Steel Corp.	247	30
55.0	Bridgeport and New Britain, Conn.	The Stanley Works	639	56
	Indianapolis, Ind.	Chapman Price Steel Co.	393	32
	" "	Continental Steel Corp.	2,063	129
	Kokomo, Ind.	" " "		
	Worcester, Mass.	Johnson Steel & Wire Co.	273	50
	Holyoke, Mass.	Geo. L. Prentiss & Co.	150	15
	Kansas City and St. Louis, Mo.	Sheffield Steel Corp.	2,160	278
	Lockport, N. Y.	Simonds Saw & Steel Co.	368	49
	Canton, Ohio	Superior Sheet Steel Co.	700	14
56.0	Newport, Ky.	Andrews Steel Co.	2,500	680
	Morgantown, W. Va.) Philadelphia, Pa.)	Carnegie-Illinois Steel Corp.	71	32
	Moline, Ill.	Republic Steel Corp.	139	8
56.25	Jackson, Ohio	Globe Iron Co.	162	25
56.5	Allentown, Pa.) Bethlehem, Pa.) Coatesville, Pa.) Danville, Pa.) Lebanon, Pa.) Sparrows Point, Md.) Steelton, Pa.) Williamsport, Pa.)	American Steel & Wire Co.	713	23
		Bethlehem Steel Co.	28,952	2,574
	Newark, Ohio	Buckeye Rolling Mill Co.	53	23
	Harrison, N. J.) Jersey City, N. J.) Syracuse, N. Y.)	Crucible Steel Co. of America	3,571	601

(continued)

	Alton and Madison, Ill.	Laclede Steel Co.	825	88
	Coatesville, Pa.	Lukens Steel Co.	1,640	230
	Phoenixville, Pa.	Phoenix Iron Co.	1,200	58
	Chester, Pa.	South Chester Tube Co.	614	113
	Conshohocken, Pa.	Alan Wood Steel Co.	1,379	255
57.0	Kenilworth, N. J.	Carpenter Steel Co.	45	0
	Reading, Pa.	" " "	834	56
	Bridgeport, Conn.	Happenstal Co.	175	24
	Philadelphia, Pa.	Midvale Steel Co.	2,075	48
	Claymont, Del.	North Steel Co.	876	66
58.0	Los Angeles, Calif.	Bethlehem Steel Co.	553	24
	Torrance, Calif.	Columbia Steel Co.	942	68
	Worcester, Mass.	G. F. Wright Steel & Wire Co.	171	18
58.5	Johnstown, Pa.	Bethlehem Steel Co.	7,649	515
	" "	Carnegie-Illinois Steel Corp.	1,237	88
	Cambridge, Ohio	" " " "	30	17
	Granite City, Ill.	Granite City Steel Co.	2,089	297
59.5	Buffalo, N. Y.	Bethlehem Steel Co.	6,853	603
	Chicago Heights, Ill.	Calumet Steel Co.	470	62
	Elwood, Ind.	Carnegie-Illinois Steel Corp.	272	272
	Philadelphia, Pa.	Ellwood Ivin's Steel Tube Works	24	5
	Buffalo, N. Y.	Hanna Furnace Corp.	395	45
	Chicago Heights, Ill.	Inland Steel Co.	368	74
	Buffalo, N. Y.	Republic Steel Corp.	1,338	59
	N. Tonawanda, N. Y.	Tonawanda Iron Corp.	25	8
60.0	Anderson, Ind.)	American Steel & Wire Co.	1,550	96
	DeKalb, Ill.)			
	Joliet, Ill.)			
	Duluth, Minn.	" " " " "	1,303	97
	San Francisco, Calif.)	Bethlehem Steel Co.	1,037	21
	Seattle, Wash.)			

(continued)

	N. Tonawanda, N. Y.	Buffalo Bolt Co.	856	96
	Joliet, Ill.	Carnegie-Illinois Steel Corp.	50	7
	Pittsburgh, Calif.)			
	Scranton, Utah)	Colbia Steel Co.	2,289	119
	Monaca, Pa.	Pittsburgh Tube Co.	193	2
60.5	Dover, Ohio	Reeves Steel & Mfg. Co.	750	20
62.5 2/	Ashland, Ky.)			
	Columbus, Hamilton.)	American Rolling Mill Co.	8,809	337
	Middletown and)			
	Zanesville, Ohio)			
	Butler, Pa.)			
	Waukegan, Ill.	American Steel & Wire Co.	1,430	20
	Cleveland, Ohio	" " " " "	3,328	69
	Donora and Rankin, Pa.	" " " " "	3,190	150
	New Haven, Conn.)			
	Trenton, N. J.)	" " " " "	3,602	115
	Worcester, Mass.)			
	Braeburn, Pa.	Braeburn Alloy Steel Corp.	160	16
	S. Chicago, Ill.)			
	Gary, Ind.)	Carnegie-Illinois Steel Corp.	29,161	3,133
	Bessemer, Pa.)			
	Canton, Ohio)			
	Clairton, Pa.)			
	Duquesne, Pa.)			
	Etna, Pa.)			
	Farrell, Pa.)			
	Irvin, Pa.)			
	McKeesport, Pa.)			
	Martins Ferry, Ohio)	" " " "	38,607	1,991
	Mingo Junction, Ohio)			
	Munhall, Pa.)			
	New Castle, Pa.)			
	Scottdale, Pa.)			
	Vandergrift, Pa.)			
	Youngstown, Ohio)			

Cont'd. 62.5 2/	Pittsburgh, Pa.	Crucible Steel Co. of America	4,346	549
	McKeesport, Pa.	Firth-Sterling Steel Co.	675	25
	Youngstown, Ohio	The Fitzsimmons Co.	72	22
	Indiana Harbor, Ind.	Inland Steel Co.	9,726	304
	Aliquippa, Pa.	Jones & Laughlin Steel Corp.	9,247	573
	Pittsburgh, Pa.	" " " " "	6,843	1,313
	Latrobe, Pa.	Latrobe Electric Steel Co.	529	39
	Washington, Pa.	Molybdenum Corp. of America	74	15
	Gary, Ind.	National Tube Co.	99	0
	Lorain, Ohio	" " "	7,456	17
	Ellwood City, Pa.	" " "	2,394	0
	McKeesport, Pa.	" " "	3,334	1
	Pittsburgh, Pa.	Pittsburgh Steel Co.	5,189	430
	Chicago, Ill.	Republic Steel Corp.	1,238	109
	Monroe, Mich.	Republic Steel Corp.	560	32
	Canton, Ohio Cleveland, Ohio Massillon, Ohio Niles, Ohio Warren, Ohio Youngstown, Ohio	" " "	17,337	916
	Pittsburgh, Pa.	" " "	181	14
	Lowellville, Ohio Youngstown, Ohio Sharon, Pa.	Sharon Steel Corp.	1,786	196
	Steubenville, Ohio	Weirton Steel Co.	1,015	186
	Weirton, W. Va.	" " "	8,080	1,136
	Martins Ferry, Ohio Portsmouth, Ohio Steubenville, Ohio Yorkville, Ohio	Wheeling Steel Corp.	13,727	1,546
	Beech Botton, W.Va. Benwood, W. Va. Wheeling, W. Va.	" " "	3,132	671

2/ In addition to the companies shown for this rate, the S.W.O.C. reports that it has contracts with the following concerns paying a base rate for common labor of 62.5¢ per hour: Allegheny Steel Co., Brackenridge and West Leechburg, Pa.; Jessop Steel Co., Washington, Pa.; Otis Steel Co., Cleveland; Rotary Electric Steel Co., Detroit; and the Timken Steel & Tube Co., Canton, Gambrinus and Wooster, Ohio.

(continued)

	Chicago, Ill.	Wilson Steel & Wire Co.	201	74
	Chicago, Ill. & vicinity	Youngstown Sheet & Tube Co.	5,130	321
	Youngstown, Ohio and vicinity	" " " "	9,808	349
63.0	Delray and Ecorse, Mich. (Detroit area)	Great Lakes Steel Corp.	4,961	277
63.5	Pittsburgh, Pa.	Heppenstall Co.	501	43
65.0	San Francisco, Calif.	Columbia Steel Co.	90	3
	Dearborn, Mich.	Detroit Seamless Steel Tubes Co.	193	8
70.0	Detroit, Mich.	Detroit Steel Corp.	222	64

121 The lowest base rate reported for the record, 30 cents, is paid by a small company whose plant is located in a rural community some 200 miles north of New York City. There are no other iron and steel plants within a radius of approximately 75 miles of Standish. The plant is small and has capacity to produce pig iron only. This annual capacity is 100,000 tons.

The next higher base rate, 34.5 cents, has been reported as an average for three small companies by the Rail Steel Bar Association. In the analysis above in section V we have listed these three companies as non-reported in view of the lack of specific data for each company. However, we may take this average base rate as an indication of the wages paid by the three companies. The three companies have their plants in the South. One is located in Birmingham, a second in Knoxville, and the third in Forth Worth. The total employment in the three plants amounts to only 653 workers, and the capacity of the plants to produce is small. The Connors Steel Company has an annual capacity for 60,000 tons of finished hot rolled products; The Knoxville Iron Company, 80,000 tons; and the Texas Steel Company, 6,000 tons of ingots and 18,000 tons of finished hot rolled products. The Birmingham plant is located in the principal producing center in the South. The Knoxville plant is approximately 250 miles from the Birmingham area and is not adjacent to any other producing center. The Texas plant is geographically isolated, being approximately 300 miles from the nearest steel plant.

The base rate of 35.3 cents is paid by one small company located in Richmond, Virginia. It should be noted that this base rate is the weighted average of several common labor rates reported by the Tredegar Company. The plant has a small capacity to produce finished hot rolled products, 44,000 tons. This company operates in the area occupied by other plants but the iron and steel industry in Virginia is small.

The base rate of 36 cents is paid by a single small company located in Alabama, 60 miles from the Birmingham producing center. The plant is small, having an annual capacity of 10,000 tons of ingots and 54,000 tons of finished hot rolled products. No figure has been reported showing the number of workers receiving the 36-cent rate.

The 36.5-cent base rate is paid by the large Republic Steel Corporation in its plant at Gadsden, Alabama. Gadsden is located at a distance of some 65 miles from the Birmingham area. With the exception of The Tennessee Coal, Iron and Railroad Company, the plant at Gadsden is the only plant in the South producing the whole range of pig iron, steel ingots and finished hot rolled products. The Gadsden plant is large for the South, having capacity for 180,000 tons of pig iron, 400,500 tons of steel ingots and 297,600 tons of finished hot rolled products. The Republic works at Gadsden employs by far the largest number of workers and the largest number of common laborers at the base rate of any company or plant with a base rate below 45 cents.

122 For the 38-cent base rate the location shifts from the South to the northern part of Michigan. A small company operates a plant at Newberry, approximately 300 miles north of Detroit. There are no other plants within long distances of this plant, although it should be observed that Newberry is located only a short distance from the Great Lakes. The plant has a small capacity to produce pig iron, 29,000 tons.

Three moderately large producers of pig iron located in or near Birmingham, Alabama, pay the 40-cent base rate. The large Republic Steel Corporation owns the smallest of these three plants, the pig iron capacity amounting to 320,000 tons. The other two companies may be classed as moderate in size. The Woodward Iron Company has two plants and a total pig iron capacity of 465,000 tons. The Sloss-Sheffield Steel and Iron Company also has two plants with a total pig iron capacity of 584,000 tons. These plants are, of course, situated in the immediate vicinity of the largest center of iron and steel production in the South. Of the three companies paying the 40-cent base rate, the Steel Workers' Organizing Committee reports an agreement with the Woodward Iron Company. This is the only agreement reported by the union for any plant in the industry in which the base rate is below 45 cents an hour.

For the company paying the 42-cent rate we must again look to the North. This rate is paid by the small Cohoes Rolling Mill Company in its plant at Cohoes, New York. The Cohoes plant is small, having capacity to produce

30,000 tons of finished hot rolled products. Cohoes is situated in the vicinity of Troy where there are several other iron and steel plants.

The two plants paying the 43-cent base rate are located in different parts of the country. The E. J. Lavino Company is a small company also operating a plant in Sheridan, Pennsylvania where the base rate is 48.5 cents. The Lavino plant at Reusens, Virginia is a small producer of pig iron, having a capacity of 36,000 tons. Reusens is approximately 100 miles west of Richmond. The Pine Forge Iron Works is a small company with its plant at Pine Forge, Pennsylvania. This plant has a small capacity for finished hot rolled products, 12,000 tons in all. Pine Forge is located within 50 miles north of Philadelphia in a rural community. In this general area, however, there is a considerable development of the iron and steel industry.

The largest concentration of workers receiving base rates which are listed in the lower portion of the above table is found at the base rate of 45 cents. This rate is paid in the seven plants of The Tennessee Coal, Iron and Railroad Company, a subsidiary of the United States Steel Corporation. These plants are the largest in the South; in fact, they account for the largest part of the industry in the South. They have capacity for 1,604,000 tons of pig iron, 1,802,000 tons of ingots and 1,336,800 tons of finished hot rolled products. The plants are located in and around Birmingham, Alabama. In the table above on page 75 it will be seen that the largest concentration of all workers and those classified as common laborers at any base rate below 56.5 cents takes place at the 45-cent rate. The Steel Workers' Organizing Committee has reported collective agreements for the plants of The Tennessee Coal, Iron and Railroad Company.

The 46-cent base rate brings us back North again. With the exception of the 48.2 rate, all of the rates above 45 cents are to be found in the North. The Burden Iron
123 Company which pays the 46-cent rate is a small company operating a small plant at Troy, New York. Other iron and steel plants are located in this vicinity. The Burden plant has capacity for 24,000 tons of finished hot rolled products.

Both plants paying the 46.5-cent rate are located in Pennsylvania, one in Milton and the other in Lebanon. Milton is approximately 70 miles north of Harrisburg, and Lebanon is 26 miles to the East. Although located in smaller communities, these plants are situated in a territory marked by a considerable development of the iron and steel industry. The Milton Manufacturing Company is a small company and the Milton plant is small, its capacity to produce being 30,000 tons of finished hot rolled products. The Wrought Iron plant at Lebanon is larger, its capacity being 75,000 tons of finished hot rolled products, but both the plant and the company may be classified as small.

The 48.0-cent rate is paid in a non-industrial Pennsylvania community, which, however, is not more than 50 miles from other centers of steel production. The steel operations of the American Car and Foundry Company would be classed as small. The plant has a capacity for 48,000 tons of finished hot rolled products. The company reports that the minimum rate is the result of collective bargaining with representatives chosen by the employees (R 750).

The highest base rate paid in any Southern State is the 48.2-cent rate in Oklahoma which is on the border between the North and the South but has been regarded here as a Southern State. The plant is located at Sand Springs, Oklahoma, a considerable distance from any iron and steel-producing center. The nearest plants are in Fort Worth and in Kansas City. The company which operates the plant, The Sheffield Steel Company, is moderate in size and is a subsidiary of the American Rolling Mill Company, one of the large companies in the industry. The plant is small, having a capacity to produce 50,000 tons of steel ingots and 35,000 tons of finished hot rolled products. The rate of 48.2 cents has been computed as the average base rate from the data submitted by the company.

Three small companies pay the 48.5-cent base rate. The Eckels-Nye Steel Company is located at Syracuse, New York, where there are other iron and steel plants. Both the Lavino plant and Sweet's Steel Company are located in non-industrial Pennsylvania communities but both are within a radius of 100 miles of important iron and steel-producing centers. The three plants are small. The

Eckels-Nye plant has a capacity to produce 10,200 tons of finished hot rolled products, and Sweet's Steel plant, 60,000 tons of these products. The Lavino plant has a capacity to produce 36,000 tons of pig iron.

The 49-cent rate is paid in a single plant operated by the Logan Iron and Steel Company in Burnham, Pennsylvania, near Harrisburg. Both the company and the plant may be classed as small. The plant has a capacity to produce 45,000 tons of finished hot rolled products. The plant is located in a non-industrial community but it is not far from centers of iron and steel production.

A small company in Massachusetts, the Tremont Nail Company at Wareham, pays the base rate of 49.5 cents. This plant has a capacity to produce 3,000 tons of nails.

The 50-cent base rate is paid by 7 companies listed
124 in our wage sample. Two are located in Pennsylvania, one in West Virginia, one in New York, one in New Jersey and two in New England. None of these plants is located outside an industrial community. The steel operations of the Henry Disston Company are not large, the capacity being 22,700 tons of ingots and 34,500 tons of finished hot rolled products. The other companies and plants are small. The Franklin Steel Works has a capacity for 45,000 tons of finished hot rolled products; the Parkersburg Iron and Steel Company, 32,100 tons of like products; the Troy Furnace Company, a capacity for 150,000 tons of pig iron; the Ulster Iron Works, a capacity for 16,000 tons of finished hot rolled products; the Wallingford Steel Company, 20,400 tons of cold rolled strip; and the Worcester Pressed Steel Company, 6,750 tons of the same product. The Steel Workers' Organizing Committee has reported a collective agreement for the Henry Disston and Sons Company.

The 50.5-cent rate is paid by a small company operating a plant in the vicinity of Buffalo, New York. This plant has a capacity of 36,000 tons for finished hot rolled products.

A small company with a plant located at Marion, Ohio, pays the base rate of 51 cents. Marion is approximately 150 miles from the Youngstown producing center. The plant has a capacity for 40,000 tons of finished hot rolled products.

The two plants paying the 52-cent base rate are some distance apart. Both, however, are located in industrial communities. The companies and the plants are small. The Rail Joint Company plant at Troy, New York has a capacity to produce 10,000 tons of finished hot rolled products and the West Virginia Rail plant at Huntington, West Virginia, 125,000 tons of these products.

A small company operating a small wire plant in Connecticut pays the 52.5-cent rate. The Atlantic Wire Company at Branford has a capacity to produce 22,500 tons of wire.

The 53-cent rate is paid in the Erie, Pennsylvania plants, in a plant near Pittsburgh, and in a plant in Baltimore. The companies operating these plants are small, and the plants themselves are small. The Apollo Steel Company at Apollo, Pennsylvania has a capacity to produce 120,000 tons of finished hot rolled products. Both Erie plants have small ingot capacities, one 48,000 tons and the other 75,000 tons. The Eastern Rolling Mill plant in Baltimore has a capacity for 90,000 tons of finished hot rolled products. The Baltimore plant is immediately adjacent to other steel mills. The Apollo, Pennsylvania plant is situated within 25 miles of Pittsburgh and the Erie plants are located at approximately equidistant mileages from the Pittsburgh, Buffalo, and Cleveland areas. The Steel Workers' Organizing Committee has reported an agreement with the Eastern Rolling Mill Company in Baltimore.

The base rate of 54 cents is paid in 4 plants. Two of the plants are in Harrisburg, Pennsylvania and one is located at Birdsboro, which is near Philadelphia. The fourth plant is located in Baltimore. The Central Iron and
125 Steel Company is the largest of these companies and may be classified as a medium-size company. Its plant at Harrisburg has a capacity for 300,180 tons of ingots and 214,300 tons of finished hot rolled products. The other Harrisburg company is small. Its plant has a capacity for 77,500 tons of ingots and 75,000 tons of finished hot rolled products. The Brooks Iron Company is small. Its plant has pig iron capacity only; this amounts to 132,000 tons. The Rustless Iron and Steel Corporation is also small. Its plant at Baltimore has capacity for 23,000 tons of ingots and 14,000 tons of finished hot rolled products.

The plants in which the 54-cent rate is paid are all in the Eastern part of the country. They are located in the immediate neighborhood of important producing centers.

The 55-cent base rate is paid in 11 plants, 4 of which are located in New England. The 3 operating companies in New England are small and the plants are likewise small. The Stanley Works at Bridgeport and New Britain, Connecticut has capacity to produce 114,800 tons of ingots and 92,500 tons of finished hot rolled products. The other two New England companies are small producers of wire. The Geo. W. Prentiss Company at Holyoke, Massachusetts has capacity for 8,400 tons and the Johnson Steel and Wire Company, capacity for 10,000 tons. The New England plants paying the 55-cent rate are located in industrial centers.

The other plants paying the 55-cent rate are rather widely separated. One is located at Lockport, New York in the Buffalo vicinity. The steel operations of the Simonds Saw and Steel Company are small, the plant having capacity for 12,000 tons of ingots and 6,850 tons of finished hot rolled products. This plant is located in the immediate vicinity of an important iron and steel-producing center.

Another plant with the 55-cent base rate is located in Canton, Ohio. The plant is small, having capacity for 72,000 tons of finished hot rolled products; the company, The Superior Sheet Steel Company, is a subsidiary of the Continental Steel Corporation of Kokomo, Indiana. The plant is located in the vicinity of large iron and steel operations.

In the central part of Indiana the 55-cent rate is paid in 3 plants. One of these, The Chapman Price Steel Company, another subsidiary of Continental Steel, is a small producer of black and galvanized sheets, having a capacity of 50,000 tons. The Continental Steel Corporation, with plants at Kokomo and Indianapolis, also pays this rate. This company may be regarded as one of the larger companies in the small classification. The plant at Indianapolis is small, having capacity for 44,600 tons of finished hot rolled products. The Kokomo plant is larger with capacity to produce 280,000 tons of ingots and 210,000 tons of finished hot rolled products. These plants are located within 150 miles of Gary, Indiana, and in the vicinity of other iron and steel plants.

The Sheffield Steel Corporation at its plants in Kansas City and St. Louis also pays the 55-cent base rate. This company is moderate in size but is a subsidiary of the American Rolling Mill Company, one of the large companies in the industry. The Kansas City plant has capacity to produce 232,400 tons of ingots and 240,200 tons of finished hot rolled products. The St. Louis plant has capacity to produce 204,100 tons of the former and 206,600 tons of the latter products. The Kansas City plant is removed some 250 miles from the nearest producing center, St. Louis.

126 The Steel Workers' Organizing Committee has reported union agreements with the Superior Sheet Steel Company at Canton, the Continental Steel Corporation at Indianapolis and Kokomo, and the Chapman Price Steel Company at Indianapolis. The Sheffield Steel Corporation reports a collective bargaining agreement at the Kansas City plant with the Amalgamated Association of Iron, Steel and Tin Workers (R 568).

The 56-cent base rate is paid in the plants of one medium-sized company, The Andrews Steel Company, and two large companies, the Carnegie-Illinois Steel Corporation and the Republic Steel Corporation. The Andrews Steel Company plant is located at Newport, Kentucky near Cincinnati, Ohio and in the vicinity of other iron and steel plants. The Andrews plant is medium-sized, having a capacity for 360,000 tons of ingots and 90,000 tons of finished hot rolled products. The Morgantown, West Virginia plant of the Carnegie-Illinois Steel Corporation has capacity for 37,000 tons of finished hot rolled products. For the Carnegie-Illinois plant in Philadelphia the capacity figures are not given above in section V, but from the small number employed we may assume that this is a small plant. The Moline, Illinois plant of the Republic Steel Corporation is small, having capacity to produce 51,000 tons of finished hot rolled products. This plant is located approximately 150 miles from Chicago and is not in the immediate vicinity of other iron and steel plants. The Steel Workers' Organizing Committee has reported union agreements with the Andrews Steel Company and the Carnegie-Illinois Steel Corporation for the plants in which the 56-cent base rate is paid.

A single small company, The Globe Iron Company, pays the 56.25 base rate. The plant is small and has capacity to produce 90,000 tons of pig iron. The plant is located at Jackson in the south central part of Ohio. It is not far removed from large iron and steel-producing centers.

The second largest concentration of plants, total number of workers employed in plants at any one base rate, and number of common laborers paid any one base rate, is found at 56.5 cents an hour. This is the base rate in 21 plants, and 9 companies operate these plants. Large, medium and small-sized companies pay the 56.5-cent rate. The American Steel and Wire Company is a subsidiary of the United States Steel Corporation. The Bethlehem Steel Company is the second largest company in the industry. The Crucible Steel Company is one of the largest medium-sized companies in the industry. The Alan Wood Steel Company and the Lukens Steel Company are medium-sized and the Laclede Steel Company, the Phoenix Iron Company, the South Chester Tube Company, and the Buckeye Rolling Mill Company are small.

The plants in which this rate is paid are likewise large, medium and small-sized establishments. The American Steel and Wire plant at Allentown is small, having capacity for 105,000 tons of finished hot rolled products. The plants of the Bethlehem Steel Company vary in size from the extremely large plant at Sparrows Point, Maryland to the small plant at Coatesville, Pennsylvania. The capacity to produce of the Bethlehem Steel plants in which the 56.5-cent rate is paid is 3,553,200 tons of pig iron, 4,940,000 tons of ingots, and 3,512,100 tons finished hot rolled products.

127 The plant of the Buckeye Rolling Mill Company at Newark, Ohio is small. It has capacity for 25,000 tons of finished hot rolled products. The two plants of the Crucible Steel Company at Syracuse are small. Together they have capacity for 66,700 tons of ingots, and 37,445 tons of finished hot rolled products. Likewise, the Crucible Steel plants in New Jersey are small. Together they have capacity for 86,700 tons of ingots, 82,000 tons of finished hot rolled products, 3,300 tons of wire and 5,400 tons of cold rolled strip.

The Laclede plant at Alton, Illinois is one of the larger plants in the small classification, having capacity for

235,400 tons of ingots and 128,550 tons of finished hot rolled products. The other Laclede plant at Madison is small. It has capacity for 103,000 tons of finished hot rolled products. The Lukens Steel plant at Coatesville, Pennsylvania is substantial in size. Its productive capacity is 840,000 tons of ingots and 441,000 tons of finished hot rolled products. The Phoenix Iron Plant at Phoenixville, Pennsylvania is one of the larger plants in the small classification, having capacity of 208,000 tons of ingots and 173,600 tons of finished hot rolled products.

The capacity of the South Chester Tube Company at Chester, Pennsylvania, is limited to the production of pipe. The capacity of the plant is 62,000 tons. The Alan Wood Steel Company operates plants of substantial size at Conshohocken, Pennsylvania. The 3 Alan Wood plants have a capacity of 406,080 tons of pig iron, 660,000 tons of ingots, and 238,000 tons of finished hot rolled products.

It will be noted that most of these plants are located in eastern Pennsylvania. The Sparrows Point plant of Bethlehem Steel and the Harrison and Jersey City plants of Crucible Steel are located in the same general area as the eastern Pennsylvania plants. The Syracuse, New York plants of Crucible Steel are located outside this area, Syracuse being some 200 miles north of Bethlehem, Pennsylvania. The other plants outside the Eastern area are the Buckeye Rolling Mill plant in Ohio and the Laclede Steel plants in Illinois.

None of the plants paying the 56.5 base rate is in any sense geographically isolated from other iron and steel plants. Distances in the Eastern area between these plants are relatively small. Syracuse is the farthest removed from important producing centers of any of the Eastern localities in which the 56.5 rate is paid. Newark, Ohio is somewhat removed from other Ohio-producing areas, but neither Syracuse nor Newark occupy separate geographical positions in the industry. The Laclede plants are located in the immediate vicinity of St. Louis, Missouri which is a small iron and steel-producing center.

The Steel Workers' Organizing Committee has reported union agreements for the plants of the American Steel and Wire Company at Allentown; the Crucible Steel plants at Harrison, Jersey City and Syracuse; the Lukens plant at

Coatesville; and the Alan Wood plants at Conshohocken. The South Chester Tube Company reports an employment contract with the Amalgamated Association of Iron, Steel and Tin Workers of North America (R 1355).

128 The 57-cent rate is paid in plants located exclusively in the eastern part of the United States. Two of the plants are located in the Philadelphia vicinity. These are the Worth Steel Company at Claymont, Delaware and the Midvale Steel Company at Philadelphia. The Carpenter Steel Company pays the 57-cent rate at its plants in Reading, Pennsylvania and Kenilworth, New Jersey. The fifth plant is located in Bridgeport, Connecticut and is operated by the Heppenstal Company which also has a plant in Pittsburgh at which the 63.5-cent base rate is paid. The Worth Steel Company may be classified as moderate in size, and the other companies as small. The capacity of the Carpenter Steel plant at Kenilworth is not given in section V above but at Reading the plant has capacity for 39,200 tons of ingots and 28,000 tons of finished hot rolled products. The Midvale plant at Philadelphia is relatively large in size, having capacity for 273,000 tons of ingots and 65,400 tons of finished hot rolled products. The Worth Steel plant at Claymont, Delaware is also moderately large in size, having capacity for 378,000 tons of ingots and 252,000 tons of finished hot rolled products. The Heppenstal plant at Bridgeport has a capacity to produce 6,000 tons of forgings. The Steel Workers' Organizing Committee reports an agreement in the Heppenstal plant.

The 58-cent base rate is paid in plants separated by the width of the continent. Two of the plants are located in and around Los Angeles, California and one is in Worcester, Massachusetts. The Pacific Coast Steel Company in Los Angeles is a subsidiary of the Bethlehem Steel Company and the Columbia Steel Company nearby is a subsidiary of the United States Steel Corporation. The G. F. Wright Steel and Wire Company is small.

The three plants are small. The G. F. Wright plant has capacity for 13,000 tons of wire. The Pacific Coast Steel plant has an ingot capacity of 85,000 tons and finished hot rolled products capacity of 66,500 tons. The Columbia Steel plant is about twice as large with an ingot capacity of 171,500 tons and finished hot rolled products capacity of 125,500 tons.

The G. F. Wright plant is located in the immediate vicinity of other plants. The nearest plants outside the Los Angeles area are located in and around San Francisco, approximately 400 miles away.

The Steel Workers' Organizing Committee reports a union agreement in the Columbia Steel plant at Torrance, California.

There is some regional diversity in the payment of the 58.5-cent base rate. The Granite City Steel plant is located in the immediate neighborhood of St. Louis. The Carnegie-Illinois plant at Cambridge, Ohio is outside the immediate vicinity of the large producing centers but this distance is not more than 50 miles. The two plants at Johnstown, Pennsylvania, the Bethlehem plant and the Carnegie-Illinois plant, are *not* over 60 miles from the Pittsburgh vicinity. The Carnegie-Illinois and the Bethlehem companies are large. The Granite City Steel Company may be classified as medium-sized.

The Bethlehem plant at Johnstown is very large. It has capacity of 1,332,000 tons of pig iron, 1,670,000 tons of ingots, and 1,143,000 tons of finished hot rolled products. The capacity of the Carnegie-Illinois plant is not given above in section V, but it is much smaller. The Cambridge, Ohio plant is small, with capacity for 95,900 tons of finished hot rolled products. The Granite City plant is medium-sized, having capacity for 400,000 tons of ingots and 275,000 tons of finished hot rolled products.

129 The Steel Workers' Organizing Committee has reported a union agreement for the two Carnegie-Illinois plants. The Granite City Steel Company reports a contract with the Amalgamated Association of Iron, Steel and Tin Workers of North America (R 703).

The table above on page 75 shows that at the 59.5-cent base rate there is a minor concentration of plants and workers. Four of the plants are located in the Buffalo area, two in the Chicago area, one in Elwood, Indiana, and one in Philadelphia.

Two large companies operate plants in the Buffalo area. —The Bethlehem Steel Company and the Republic Steel Corporation. The Hanna Furnace Corporation, also in Buffalo, is a subsidiary of the National Steel Corporation. The Tonawanda Iron Corporation may be classified as

small. The Elwood, Indiana plant is operated by Carnegie-Illinois. The large Inland Steel Company operates a plant in Chicago Heights. The Calumet Steel Company is small, as is the Ellwood Ivin's Steel Tube Works.

The Bethlehem plant at Buffalo is very large. The pig iron capacity is 1,490,400 tons, the ingot capacity 2,370,000 tons, and the finished hot rolled capacity 1,649,000 tons. The Republic plant at Buffalo is also large, having a pig iron capacity of 450,000 tons, an ingot capacity of 566,000 tons and a finished hot rolled capacity of 351,000 tons. The Hanna Furnace plant has a large pig iron capacity, 674,700 tons. The Tonawanda Iron Corporation has a pig iron capacity of 162,000 tons.

The Elwood, Indiana plant of the Carnegie-Illinois Steel Corporation is small, having a finished hot rolled capacity of 77,800 tons. This plant also produces tin plate in the amount of 153,500 tons. The plants at Chicago Heights are both small. The Inland Steel plant has 90,000 tons capacity for finished hot rolled products and the Calumet Steel plant a like capacity of 50,000 tons. The Ellwood Ivin's plant in Philadelphia is very small, having a capacity to produce 1,350 tons of cold drawn seamless tubes.

The plants paying the 59.5-cent rate are located in or near important centers of production, Buffalo, Chicago, and Philadelphia. The Elwood, Indiana plant is the farthest removed from a large producing center, it being approximately 150 miles from Gary. However, in central Indiana there is a small producing center and Elwood is located in this vicinity.

The Steel Workers' Organizing Committee reports a union agreement in the Elwood, Indiana plant.

The 60-cent base rate is a point of minor concentration in the table on page 75 in so far as plants and total number of employees are concerned. The number of workers receiving this base rate, however, is not exceptional. This latter fact is due to the relatively small proportion in some of the plants of common labor paid the base rate compared with the total number of workers in the plant. The American Steel and Wire plants have 6.8 per cent of the workers at the base rate; the Bethlehem Steel Company, 2.0 per cent; the Columbia Steel Company, 4.8 per cent; and the Pittsburgh Tube Company, 1 per cent. Only in the Buffalo

Bolt plant and the Carnegie-Illinois plant does the percentage exceed 10 per cent.

The American Steel and Wire Company, the Carnegie-Illinois Steel Corporation, and the Columbia Steel Company are subsidiaries of the United States Steel Corporation. The Bethlehem Steel Corporation is the other large company paying the 60-cent rate. The Buffalo Bolt Company and the Pittsburgh Tube Company are small.

None of the plants paying the 60-cent base rate is especially large, excepting the Carnegie-Illinois plant at Joliet. It has a capacity for 483,000 tons of pig iron; 475,000 tons of ingots, and 358,500 tons of finished hot rolled products. However, the number of workers reported for this plant in the summer of 1938 was very small. The Columbia Steel plant at Pittsburg, California is moderate in size, with ingot capacity of 192,000 tons and finished hot rolled capacity of 135,900 tons, The Columbia plant at Ironton, Utah has a capacity to produce 172,000 tons of pig iron. The Bethlehem plant at San Francisco is also moderate in size, having 155,000 tons of ingot capacity and 132,000 tons of finished hot rolled capacity.

The American Steel and Wire plant at Anderson is not large. Its capacity is 105,000 tons of finished hot rolled products. The plant at DeKalb has capacity to produce 146,950 tons of wire, 38,400 tons of wire nails, and 31,250 tons of wire fencing. At Joliet the plants have capacity to produce 360,700 tons of wire and nails. The plant at Duluth is medium-sized, having capacity of 300,000 tons of ingots and 220,000 tons of finished hot rolled products.

The Bethlehem plant at Seattle is moderate in size. The capacity is 140,000 tons of ingots and 119,000 tons of finished hot rolled products. The Pittsburgh Tube plant has a capacity to produce 73,200 tons of pipe. The Buffalo Bolt plant has capacity for 65,000 tons of finished hot rolled products.

Plants paying the 60-cent base rate are located across the entire country. The Buffalo Bolt Company is located in the vicinity of Buffalo. On the West Coast are located the Bethlehem plants at San Francisco and Seattle. A Columbia Steel plant is located in the San Francisco area and there is a Columbia plant in Utah. Between these

extremes are found the American Steel and Wire plants in the Chicago vicinity, in Anderson, Indiana and in Duluth, Minnesota. The Carnegie-Illinois plant at Joliet is near Chicago. The Pittsburgh Tube plant at Monaca is in the Pittsburgh vicinity.

The Anderson, Indiana plant is about 150 miles from Gary and is adjacent to other plants in central Indiana. DeKalb and Joliet are close to Chicago. The Pennsylvania plant is practically in Pittsburgh. The other plants are more isolated. Duluth is approximately 500 miles from Chicago and there is little in the way of an iron and steel industry between these cities. However, Duluth is located on the Great Lakes and has water transportation open to it.

The San Francisco vicinity is the home of the principal development of the industry on the West Coast but the nearest plants outside this vicinity are in Los Angeles, Seattle and Utah. The distances separating the Seattle and Utah plants from other plants in the West are hundreds of miles.

There is evidence in the record which indicates that the medium-sized Colorado Fuel and Iron Company pays the base rate of 60 cents (R 602). The plants, located at Pueblo, Colorado, have capacity to produce 563,000 tons of pig iron, 888,000 tons of ingots and 663,500 tons of
131 finished hot rolled products. The Colorado Fuel and Iron plants are separated by long distances from other producing centers. It is approximately 1,000 miles westward to the Coast and 1,000 miles eastward to Chicago. The development of the industry on either side of the Colorado Company is very sparse.

The Steel Workers' Organizing Committee has reported union agreements in the American Steel and Wire plants, in the Columbia Steel plants, and in the Carnegie-Illinois plant.

The base rate of 60.5 cents is paid in the Reeves Steel and Manufacturing Company in Dover, Ohio. This is a small company. Its plant has a capacity for 50,000 tons of finished hot rolled products. Dover is adjacent to the Cleveland-Youngstown-Canton producing area.

The predominating base rate in the table above on page 75 is the 62.5-cent rate. This rate is paid by the American

Rolling Mill Company, the American Steel and Wire Company, the Carnegie-Illinois Steel Corporation, Inland Steel Company, Jones and Laughlin Steel Corporation, The National Tube Company, Republic Steel Corporation, Weirton Steel Company, Wheeling Steel Corporation, and the Youngstown Sheet and Tube Company. With one exception, the companies named constitute the list of largest companies reporting wage data for the record. The only large company that does not pay the 62.5-cent base rate in any of its plants is the Bethlehem Steel Company. The National Tube Company is a subsidiary of the United States Steel Corporation and the Weirton Steel Company is a subsidiary of the National Steel Corporation.

Medium and small-sized companies also pay the 62.5-cent rate. The Crucible Steel Company of America, the Sharon Steel Corporation, the Pittsburgh Steel Company, the Allegheny Steel Company, the Otis Steel Company, and the Timken Steel and Tube Company are medium-sized. Small companies paying this rate are the Braeburn Alloy Steel Corporation, Firth-Sterling Steel Company, the Fitzsimmons Company, Latrobe Electric Steel Company, Molybdenum Corporation of America, Wilson Steel and Wire Company, the Jessop Steel Company, and the Rotary Electric Steel Company.

The plants in which the 62.5-cent base rate is paid are large, medium and small-sized. The principal iron and steel operations of the companies mentioned above are carried on in plants paying this rate. We will not attempt to give in detail here the capacity to produce possessed by these plants. It will be sufficient to give the total productive capacity for all of the plants of these companies in which the 62.5-cent rate is paid.

paying this rate. We will not attempt to give in detail here the capacity to produce possessed by these plants. It will be sufficient to give the total productive capacity for all of the plants of these companies in which the 62.5-cent rate is paid.

Company	ANNUAL TONNAGE CAPACITY		
	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
American Rolling Mill Co.	514,500	1,807,600	1,106,400
American Steel & Wire Co.	852,700	1,417,000	1,360,500
Carnegie-Illinois Steel Corp.	15,817,000	20,325,900	13,047,900
Inland Steel Co.	1,003,000	2,000,000	1,516,000
Jones & Laughlin Steel Corp.	3,000,000	3,671,200	2,837,600
National Tube Co.	2,179,000	2,400,000	2,284,300
Republic Steel Corp.	2,460,000	5,563,000	3,677,000
Weirton Steel Co.	631,800	1,312,000	955,000
Wheeling Steel Corp.	959,200	1,500,000	974,000
Youngstown Sheet & Tube Co.	3,000,000	3,120,000	2,122,000
Crucible Steel Co. of America	460,000	809,950	691,900
Sharon Steel Corp.	155,000	450,000	305,900
Pittsburgh Steel Co.	480,000	720,000	610,000
Allegheny Steel Co.		482,000	314,200
Otis Steel Co.	430,000	672,000	495,000
Timken Steel & Tube Co.		340,000	236,633
Braeburn Alloy Steel Corp.		5,040	3,000
Firth-Sterling Steel Co.		14,500	9,100
The Fitzsimmons Co. 1/	C	C	C
Latrobe Electric Steel Co.		12,000	5,500
Molybdenum Corp. of America 2/	C	C	C

American Rolling Mill Co.	514,500	1,807,600	1,106,400
American Steel & Wire Co.	852,700	1,417,000	1,360,500
Carnegie-Illinois Steel Corp.	15,817,000	20,325,900	13,047,900
Inland Steel Co.	1,003,000	2,000,000	1,516,000
Jones & Laughlin Steel Corp.	3,000,000	3,671,200	2,837,600
National Tube Co.	2,179,000	2,400,000	2,284,300
Republic Steel Corp.	2,460,000	5,563,000	3,677,000
Weirton Steel Co.	631,800	1,312,000	955,555
Wheeling Steel Corp.	959,200	1,500,000	974,000
Youngstown Sheet & Tube Co.	3,000,000	3,120,000	2,122,000
Crucible Steel Co. of America	460,000	909,950	691,900
Sharon Steel Corp.	155,000	450,000	305,900
Pittsburgh Steel Co.	480,000	720,000	610,000
Allegheny Steel Co.		482,000	514,200
Otis Steel Co.	430,000	672,000	495,000
Timken Steel & Tube Co.		340,000	236,633
Braeburn Alloy Steel Corp.		5,040	3,000
Firth-Sterling Steel Co.		14,500	9,100
The Fitzsimmons Co. 1/	C	C	C
Latrobe Electric Steel Co.		12,000	5,500
Molybdenum Corp. of America 2/	C	C	C
Wilson Steel & Wire Co. 2/	C	C	C
Jessop Steel Co.		16,000	8,500
Rotary Electric Steel Co.		100,000	80,000
Totals	31,943,000	46,938,190	32,839,188

1 32,148 tons cold drawn bars.

133 Plants paying the 62.5-cent base rate are located, at the Western limit, in the Chicago vicinity, and as far East as Worcester, Massachusetts. Eastward from Pittsburgh the 62.5-cent rate is paid in the American Steel and Wire plants in Trenton, New Jersey, New Haven, Connecticut, and Worcester, Massachusetts.

The Steel Workers' Organizing Committee has reported agreements in the plants of the Allegheny Steel Company, American Steel and Wire Company, Braeburn Alloy Steel Corporation, Carnegie-Illinois Steel Corporation, Crucible Steel Company of America, Firth-Sterling Steel Company, Jessop Steel Company, Jones & Laughlin Steel Corporation, Latrobe Electric Steel Company, National Tube Company, Otis Steel Company, Pittsburgh Steel Company, Rotary Electric Steel Company, Sharon Steel Corporation, Timken Steel & Tube Company, and the Wheeling Steel Corporation.

The 63-cent rate is paid in the Detroit vicinity in the plants of the Great Lakes Steel Corporation. This company is a subsidiary of the National Steel Corporation, one of the large enterprises in the industry. The 3 plants of the Great Lakes Steel Corporation are large. The pig iron capacity is 360,200 tons, the ingot capacity 920,000 tons, and the finished hot rolled capacity 950,000 tons.

The 63.5-cent base rate is paid by a small company in Pittsburgh. The Heppenstall Company has an ingot capacity of 46,600 tons.

The Steel Workers' Organizing Committee reports a union agreement at the Heppenstall plant.

The 65-cent base rate is paid in two plants, one in Detroit and the other in San Francisco. The Detroit company is small. The Columbia Steel Company is a subsidiary of the United States Steel Corporation.

The Detroit Seamless Tube plant has a capacity for 25,800 tons of finished hot rolled products. The Columbia Steel plant has capacity to produce 13,280 tons of wire and springs.

The Steel Workers' Organizing Committee reports an agreement at the Columbia Steel plant.

The highest base rate reported for the record is 70 cents an hour; it is paid by the Detroit Steel Corporation in Detroit. This is a small company and the plant is likewise small. Its capacity is 123,000 tons of cold rolled strip.

134 It will aid us in interpreting the minimum wage structure of the industry if we now examine the table on page 75 in the light of the factors which we have just related to the base rates.

Seventeen of the 39 base rates listed in the table fall below 50 cents an hour. 33 of the 234 plants pay the base rates from 30 to 50 cents an hour, and these plants employ 16,049 or 5.1 per cent of all the workers included in the table. In all, 2,787 common laborers are paid base rates below 50 cents and this is approximately 10 per cent of the common laborers included in the table.

Thus, we find that almost half the base rates fall below 50 cents an hour but that only a small portion of the plants and the workers in the industry or the common laborers are affected by these rates. A further indication of the relatively small portion of the industry affected by the rates below 50 cents an hour is shown by a comparison of the capacity to produce of these plants with the total productive capacity of the industry. This comparison is given in the following table:

	Annual Tonnage Capacity		
	Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
Total capacity to produce of plants paying base rates below 50 cents an hour:[1]	3,354,000	2,268,500	2,259,600
Total capacity to produce of iron and steel industry:	52,715,100	71,431,089	54,225,446

[1] One plant has capacity to produce nails only.

The plants paying base rates below 50 cents an hour have 6.4 per cent of the industry's pig iron capacity, 3.2 per cent of the ingot capacity, and 4.1 per cent of the finished hot rolled capacity.

While the portion of the iron and steel industry in which the lower base rates are paid does not loom large in comparison with the remainder of the industry, it does include in its entirety the Southern portion of the industry.

We have considered the South to be the area from the Atlantic Seaboard westward, including Virginia, Tennessee, Arkansas and Oklahoma on the North, and Oklahoma and Texas as the Western limit. This area includes within it the traditional South, with the possible exception of Kentucky. The Kentucky iron and steel plants are allied by

geography and wage structure with the North rather than with the South and, hence, the State has not been included within the Southern area. Oklahoma is a borderline State, standing midway between North and South. The minimum wage in the steel plant in Oklahoma and the geographic position of the plant ally it with the Southern area and we have, as a consequence, included Oklahoma in the South.

If we take out of the table above on page 75 the
135 data which apply to plants located in the South, the following summary applicable to the South is the result:

Base Rate	Number of Plants	Total number of workers in these plants	Total number of employees being paid base rate
34.5	3	653	221
35.3	1	458	125
36.0	1	250	....
36.5	1	2,487	437
40.0	5	1,355	215
43.0	1	175	91
45.0	7	7,631	988
48.2	1	186	38
Totals	20	13,195	2,115

This table shows us that the Southern plants employ most of the workers in plants paying base rates below 50 cents an hour and most of the common laborers paid these rates. The 20 Southern plants employ 13,195 of the 16,049 workers in the plants with base rates below 50 cents and 2,115 of the 2,787 common laborers paid at these rates.

Outside the South, the 30 and 38-cent base rates are paid in small and comparatively isolated pig iron producing plants located in New York and Michigan, respectively. The 42 and 46-cent base rates are paid in two plants in the vicinity of Troy, New York. These plants are both small, having a small capacity for finished hot rolled products.

The other low-rate plants are located in eastern Pennsylvania with the exception of a small plant located in Syracuse, New York and the small nail plant in Massachusetts. The Pennsylvania plants are all in the eastern part of the State. One of the plants paying 46.5 cents is in a non-industrial area but the other is located near Harrisburg. The other plants, paying 48, 48.5, and 49 cents, are located in non-industrial areas. They are all small. One has pig iron capacity only and the others, capacity for finished hot rolled products. All of these low base rate plants in the north are operated by small companies. None produce

steel ingots, their output being either pig iron in small amounts, finished hot rolled products or specialty products, likewise in small amounts.

The situation is different in the South. Large companies in the South pay the lower base rates. The Tennessee Coal, Iron and Railroad Company is a large company in its own right and it is also a subsidiary of the United States Steel Corporation. The Republic Steel Corporation operates two of the low base rate plants. The Sheffield Steel Company, a subsidiary of the American Rolling Mill Company, operates one of these plants. Medium-sized companies operate pig iron plants in the Birmingham area. Small companies likewise operate in the South at the low base rates.

The Southern plants vary from small to large. The Tennessee Coal, Iron and Railroad Company operates
136 large plants in the Birmingham area and the Republic plant at Gadsden is moderately large in size. The Sheffield Steel plant is moderate in size as are the pig iron plants in Birmingham. The other Southern plants may be classified as small.

The Tennessee Coal, Iron and Railroad Company and the Republic Steel Corporation have capacity to produce the principal products of the industry in their Southern plants. The Sheffield Steel Company, The Kilby Steel Company, and The Texas Steel Company also have ingot and finished hot rolled capacity. The other plants are specialized in the production of pig iron or finished hot rolled products.

The union organization to be found in the lower-paying plants as reported by the Steel Workers' Organizing Committee will be found in the South in the Birmingham area.

From the evidence we see that the Southern iron and steel industry is characterized by the presence of large and small companies and large and small plants, and by integrated and non-integrated operations. The characteristic features of the industry as a whole are found in the South with the exception of the characteristic wages of the larger part of the industry. The Southern industry is geared to the lower base rates in contrast to the higher wage plane of the remainder of the industry. Looking at the situation from another direction, the low base rates in the North do not give us a representative cross-section of the industry; the low base-rate plants in the North, as will be seen from further comparison of the higher base rates listed in the

table above, are not typical of the industry in the North. But in the South, whatever the circumstances under which production is carried on, the base rates never rise above the lowest portion of the industry's wage scale.

The wage structure of the industry in the South is very substantially below the remainder of the industry. The highest base rates in the South are much lower than the more predominant lower base rates in the North. Reference to the table above on page 75 will show that there are no concentrations of workers or of those classified as common laborers comparable with the concentration at 45 cents until the rates of 55, 56 and 56.5 cents are reached. The 45-cent rate is paid entirely in the South and is next to the highest Southern base rate. The 55, 56, and 56.5-cent rates are paid in Northern plants and are the lower rates at which the more substantial concentrations appear in the table.

In view of the evidence which shows that across the South for a distance of some 2,000 miles from East to West the minimum wages in the industry are uniformly low, and in contrast to the remainder of the industry, on a much lower plane, we believe that this region should be taken separately for the purpose of finding a prevailing minimum wage.

The Southern region as we have defined its limits here covers a very large territory. Within this territory the degree of industrial development varies and the base rates range from a low rate of 34.5 cents to a high rate of 48.2 cents. The rates vary from State to State, from producing center to producing center, and even within the same producing center. The uniformity that we referred to above is not a uniformity of all base rates in the Southern region but a uniformly low base rate structure in comparison with the remainder of the industry.

137 The Southern iron and steel industry is centralized to a high degree in the State of Alabama. This State alone accounts for 94 per cent of the pig iron capacity of the South, 97.6 per cent of the ingot capacity and 74.7 per cent of the hot rolled products capacity. Birmingham is the center of production in Alabama and for the whole South as well. The table above on page 27 shows that 12 of the reported plants in Alabama are located in the immediate vicinity of Birmingham. Two other plants are located within a radius of 75 miles.

East and West across the long distances in the Southern region from Birmingham the industry has not developed to any extent. Wage data have been summarized above for the plant in Oklahoma and the 3 plants in Virginia. The Rail Steel Bar Association has reported an average base rate for three plants located in Texas, Tennessee and Alabama.

In view of the variation among the base rates and the long distance between the Eastern and Western limits of the region, the question arises as to whether a single prevailing minimum wage should be found for the whole region or whether the Southern region should be divided further into geographic areas and a prevailing minimum wage be found for each area.

At a number of places in the record the Board has been urged to follow the wage districts established by the Code for the Iron and Steel Industry under the National Recovery Administration (R 561, 759, 805, 966, 1093). District 13 was outlined in the Code as all of that part of the United States south of Maryland, West Virginia, Kentucky and Missouri and the States of Texas and Oklahoma, and District 14 was given as Jefferson County, Alabama. The minimum wage in the former District was 25 cents and in the latter 27 cents an hour (Exhibit M, page 24).

One difficulty involved in making application of the Code wage Districts 13 and 14 to the present situation is that they do not outline separate wage areas. The highest base rate in the South is found in the Oklahoma plant and Oklahoma was in District 13, the low wage district. The lowest base rate, if we may judge by an average, is paid in Birmingham which was the higher wage area under the Code. One plant in Virginia pays a rate above some rates paid in Birmingham.

The principal difficulty with the Code wage districts as a means of outlining regional boundaries which might be set up in these proceedings is that the Code districts were not drawn up to bring out the predominant minimum wage practice of the industry viewed either as a whole or over broad geographical regions. The opposite objective motivated the drawing of the boundaries of the Code wage districts (R 759). As it is expressed in the brief of the Andrews Steel Company, under the Code "basic wage rates were established in the steel industry considering local conditions as found in the separate plant locations" (R 1027).

The numerous wage districts in the Code were established to continue many of the wage differentials existing among producing centers at the time the Code was formulated. The purpose underlying the establishment of the Code regions was, therefore, different from the purpose underlying our analysis of the industry's minimum wage structure in the present proceedings. The predominant minimum wage practice in this industry comes to light only when we view the practice of the industry as a whole or over broad regional areas.

138 It does not appear to us that the Southern geographic region which contains the low wage branch of the industry should be broken up into further territorial divisions along the lines followed in the Code or along any other lines. As we have seen, the Southern branch of the industry operates on a substantially lower base rate level compared with the remainder of the industry. The low base rate structure is a distinctive feature of the whole Southern area from Oklahoma to Virginia and including the most important producing area, Alabama. The Virginia companies have specifically urged in the record that because of the similarity of their wage structure with the other Southern plants they be included in the Southern region (R 1100, 1125, 1148). The brief of the E. J. Lavino Company, of Reusens, Virginia, states that: "The wages paid in the State of Virginia are and always have been comparable with similar wages paid throughout the South and in any division the State of Virginia should be included in the Southern District" (R 1151).

The evidence does not show that the Southern region is divided into distinct areas of competition. Rather, the evidence leads in the other direction. Mr. Patton, representing the Republic Steel Corporation, testified at the hearing that the Republic plant at Gadsden is in competition with other plants in Alabama (R. 316) and that the pig iron plant operated by Republic in Birmingham is in competition with the other Birmingham pig iron plants (R 317). Mr. Beye, representing the U. S. Steel Corporation, testified that the Tennessee Coal, Iron and Railroad Company is in competition with the other iron and steel works in Alabama (R 302).

The economic position of the industry in the Southern States other than in Alabama is not specifically covered at

any length in the record but in view of all the evidence with respect to the Southern branch of the industry, we cannot find any factor of separate wage structure or separate economic or geographical position which would warrant the drawing of territorial lines within the Southern region for the purpose of finding more than one prevailing minimum wage.

The table above on page 99 enables us to compare the base rates being paid in the Southern plants and the number of workers involved at each of the base rates. An inspection of the table shows that the outstanding or predominant base rate is 45 cents an hour. Approximately one-half of the common laborers in the South receive 45 cents an hour. This rate is paid in plants which employ over 50 per cent of all the workers employed in the Southern plants. The second largest concentration of workers at any base rate is at the 36.5 rate which is paid to 437 common laborers. The concentrations at the other base rates are much smaller.

It should be pointed out that the 45-cent rate is paid by a single company, The Tennessee Coal, Iron and Railroad Company, with plants in the Birmingham area. As we have seen above, the producing center around Birmingham is far and away the most important part of the Southern industry. Within the Birmingham area the plants of the Tennessee Coal, Iron and Railroad Company have capacity for over three-fourths of the ingot production of the entire South, over one-half of the capacity for finished hot rolled products and almost one-half of the pig iron capacity. And this company employs over one-half of all the workers in the Southern industry. Thus, while it is true that the most predominant base rate is paid by only one company, it is apparent that the relative size and the large working force of this company put it in a position to be the determining factor in establishing the prevailing minimum wage for persons employed in the Southern industry.

139 On the basis of all the evidence in the record with respect to minimum wages in the Southern region, it is clear that 45 cents an hour is the most commonly received minimum wage among persons employed in the Southern branch of the industry, and in view of its pre-

ponderance we find 45 cents to be the prevailing minimum wage in the South.

Although there are no iron and steel plants in Louisiana, Arkansas, Mississippi, North Carolina, South Carolina and Florida, we include these states for the sake of completeness in the Southern region, together with the states in which there are iron and steel plants, namely, Oklahoma, Texas, Alabama, Tennessee, Georgia, and Virginia.

The wage data for the Northern and Western portion of the iron and steel industry are given in the table below. This is the same table as the one above on page 75, but with the data applicable to the South removed.

Base Rates for Common Labor Currently Being Paid in the North and West	No. of Iron and Steel Plants Paying Each of Base Rates	Total No. of Wage Earners Employed by These Plants	Total No. of Common Laborers Receiving Each Base Rate
30.0	1	103	18
38.0	1	342	121
42.0	1	163	9
43.0	1	52	19
46.0	1	300	60
46.5	2	1,008	160
48.0	1	135	24
48.5	3	523	210
49.0	1	165	38
49.5	1	63	13
50.0	7	1,656	233
50.5	1	178	110
51.0	1	335	23
52.0	2	406	77
52.5	1	130	13
53.0	4	2,312	150
54.0	4	2,451	265
55.0	11	6,746	623
56.0	4	2,710	720
56.25	1	162	25
56.5	21	38,947	3,965
57.0	5	4,005	194
58.0	3	1,666	110
58.5	5	11,005	917
59.5	8	9,745	1,128
60.0	13	7,278	438
60.5	1	750	20
62.5[1]	101	200,466	14,669
63.0	3	4,961	277
63.5	1	501	43
65.0	2	283	11
70.0	1	222	64
Totals	213	299,769	24,747

[1] In addition to the companies shown for this rate, the S. W. O. C. reports that it has contracts with the following concerns paying a base rate or common labor of 62.5¢ per hour: Allegheny Steel Co., Brackenridge and West Leechburg, Pa.; Jessop Steel Co., Washington, Pa.; Otis Steel Co., Cleveland; Rotary Electric Steel Co., Detroit; and The Timken Steel & Tube Co., Canton, Gambrinus and Wooster, Ohio.

140 We have already had occasion, above, on page 99, to characterize the base rates in this table below 50 cents an hour. We have seen that this grouping of base rates is paid by companies operating small plants, none of which has capacity to produce ingots. These plants have capacity for small amounts of pig iron or finished hot rolled products. With few exceptions, the plants are located in small communities at some distance from the centers of iron and steel production. These communities are separate from each other. The low base rate plants are found in Michigan, New York and Massachusetts, but the majority are found in the central part of Pennsylvania.

Moving on up the wage scale to the base rate of 55 cents we find that the 50, 50.5, 51, 52, 52.5, 53, and 54 base rates are paid by small companies operating small plants. The only exception is the Central Iron and Steel Company at Harrisburg, Pennsylvania which is a medium-sized company and its operations are medium in size. The Henry Disston Company at Philadelphia is classified here as a small company because its steel operations are small.

None of these companies is integrated to the extent of producing pig iron, ingots, and rolled products, but within this wage grouping a tendency toward integration is noticeable. Six establishments are integrated to the extent of producing both ingots and rolled products. On the whole, the companies and plants paying the 50 to 55-cent base rates are larger than the companies and plants in the lower wage grouping. It will be observed that as the companies and plants increase in size and tend toward integrated operations the base rates are higher.

With regard to location the plants in this wage grouping exhibit a different tendency from the group of plants paying the base rates below 50 cents. The plants in the higher wage group tend to be located in the immediate vicinity of the larger producing centers, and the plants located outside a steel-producing center are generally situated in larger communities that was the case with the plants in the lower wage grouping. No particular locale marks out the location of the plants paying the base rates from 50 to 55 cents. These rates are found in localities eastward from Marion, Ohio into New England. Geographically, the lower paying plants are, for the most part, tied into the economy of

producing areas in which higher rates are paid. Only two small producing centers come entirely within the grouping of base rates below 55 cents.

Northeast from Pittsburgh, at Erie, Pennsylvania, a distance of approximately 100 miles, the two plants pay the base rate of 53 cents. Each of the plants has a small capacity for ingots and finished hot rolled products, and both are operated by small companies. The Erie Forge Company employs 241 workers of whom 3 are paid the base rate and the Erie Forge and Steel Company employs 625 of whom 9 are paid the base rate.

141 Outside the South the producing center paying the lowest base rates is the small center in the vicinity of Troy, New York. The companies and plants here are small. The situation with respect to base rates is as follows:

Name	No. of employees	No. on base rate	Base Rate (cents)
Cohoes Rolling Mill Co.	163	9	42.0
Burden Iron Co.	300	60	46.0
Troy Furnace Co.	196	37	50.0
Rail Joint Co.	132	24	52.0

Neither Erie nor Troy can be said to be distinct economic regions. Both centers are relatively short distances from other centers of production.

In our consideration of the base rate scale we have yet to deal with the bulk of the industry. The base rates from 30 to 55 cents are over half the base rates paid in the Northern and Western industry. But the number of plants, and employees, and the capacity to produce included within this wide range of rates is only fractional compared with the extent of the industry paying the higher rates. Thirty-three of the 213 plants pay the base rates below 55 cents. These plants employ 10,322 of the 299,769 workers, or 3.4 per cent, and 1,543 of the 24,747 common laborers or 6.2 per cent. In terms of capacity to produce compared with the industry as a whole these plants have 6.9 per cent of the pig iron capacity, 4.0 per cent of the ingot capacity and 5.7 per cent of the finished hot rolled products capacity.

With the base rate of 55 cents we come to the portion of the base rate scale within which is included the larger phase of iron and steel production. The following table (See

page 106) summarizes the wage data and the capacity figures for the plants paying each of the base rates above 54 cents.

Although 15 base rates are listed in the above table, (See p. 106) a number of them are of minor importance. In fact, the principal operations of the industry may be said to be carried on in plants paying only 5 different base rates, namely, 56.5, 58.5, 59.5, 60, and 62.5 cents. Over 90 per cent of the workers and plant capacity represented in the table are accounted for by the companies which pay the 5 base rates just enumerated. As we have observed before, one of these rates, 62.5 cents, stands out above the others to an overwhelming degree. This rate alone accounts for over two-thirds of the total number employed in the plants paying base rates above 54 cents, for approximately 60 per cent of the common laborers, and for over two-thirds of the capacity of these plants. The base rate of 56.5 cents takes second place in importance but much below 62.5 cents, with approximately 13 per cent of the workers and 11 per cent of the ingot capacity of the plants in the table. The three rates, 59.5, 58.5, and 60 cents, in order of their importance fall much below the two other outstanding rates.

106.

Base Rate (cents)	No. of Plants Paying Each Rate	Total No. of Employees in These Plants	Total No. of Common Laborers Paid Each Base Rate	TOTAL PRODUCTIVE CAPACITY (TONS) OF PLANTS PAYING EACH BASE RATE		
				Pig Iron and Ferro Alloys	Steel Ingots and Steel for Castings	Finished Hot Rolled Products
55.0	11	6,746	83	0	843,300	872,750
56.0	4	2,710	20	0	360,000	178,000
56.25	1	162	25	90,000	0	0
56.5	21	38,947	3,65	3,959,280	7,036,800	4,845,695
57.0	5	4,005	34	0	690,200	345,400
58.0	3	1,666	10	0	256,500	192,000
58.5	5	11,005	17	1,332,000	2,070,000	1,513,900
59.5	8	9,745	1,28	2,777,100	2,936,000	2,217,800
60.0	13	7,278	58	655,000	1,262,000	1,035,400
60.5	1	750	20	0	0	50,000
62.5	101	200,466	14,69	31,943,000	46,938,190	32,839,183
63.0	3	4,961	77	360,200	920,000	950,000
63.5	1	501	43	0	0	46,600
65.0	2	283	11	0	0	25,800
70.0	1	222	64	0	0	0
Totals	180	289,447	23,04	41,116,580	63,312,990	45,112,528

The underlying reason for these pronounced uni-
143 formities and concentrations in the scale of base rates is the large integrated operations of the large companies, all of which fall within the portion of the scale above 54 cents and most of which are carried on at the 5 rates just mentioned. Some of the large companies control small or medium-sized subsidiaries or operate small plants directly, but one of the main determinants of the base rate structure is the large integrated operations of the large companies. The uniformity and the concentrations which we have just pointed out at the few base rates are the direct result of the employment of large numbers of workers in the industry's large operations.

The details as to size of company and plant, and also as to the nature of product, extent of unionization, and geographic location as they are related to the base rates of 55 cents and more have been presented above on pages 79 to 84 and 89 to 98. We will summarize some of the salient details here, first, as to the position of the large companies.

Large scale operations come into the picture with the 56.5-cent base rate. Below this rate are a moderate-sized subsidiary of a large company and three small plants operated by large companies. At the 56.5-cent rate a single large company, Bethlehem Steel, is predominant to the extent of employing over 74 per cent of all the workers in the plants paying this rate and over 64 per cent of the common laborers. The influence of the large company and the large integrated operations on the base rate structure is illustrated by the fact that in the Bethlehem plant at Sparrows Point, Maryland, 15,846 workers are employed of whom 1,477 are paid the base rate, and at the plant in Bethlehem, Pennsylvania there are employed 8,342 workers of whom 391 are common laborers being paid the base rate. Although 21 plants are listed at 56.5 cents, these 2 plants alone account for over one-half the workers employed and for approximately one-half the common laborers paid the base rate. Only one other large company pays the base rate of 56.5 cents and this is the American Steel and Wire Company in its small plant at Allentown, Pennsylvania.

With the 58-cent rate the Western plants begin to come into the picture. A subsidiary of the U. S. Steel Corporation and the Bethlehem Steel Company carry on relatively small operations at this rate.

Johnstown, Pennsylvania is the most important producing center in which the rate of 58.5 cents is paid and this is due to the extremely large integrated plant situated there and operated by the Bethlehem Steel Company. This plant employs 7,649 workers of whom 515 receive the base rate. The total number of workers employed in plants paying the 58.5-cent base rate is 11,005 and the total number of common laborers paid the base rate is 917. The outstanding position of the Bethlehem plant is apparent from this comparison. The Carnegie-Illinois Company also operates a plant in Johnstown and pays the 58.5-cent rate but this plant is much smaller than the Bethlehem plant, and the plants at Cambridge, Ohio are very small.

At the 59.5-cent rate the Bethlehem Steel Company is also in a predominant position. The Lackawanna plant, paying the 59.5-cent rate, is one of the largest plants in the industry. In all, this plant employs 6,853 workers of whom 603 are paid the base rate. The other plants in which the 59.5-cent rate is paid employ a total of 2,891 workers of whom 526 are paid the base rate. This comparison shows the predominance of the large integrated Bethlehem plant at the 59.5-cent rate. Much smaller, but second in size to the Lackawanna plant, is the Republic plant located in the same vicinity. Also operating in this vicinity and paying this rate is the Hanna Furnace Company, a subsidiary of a large company. Two other large companies, Carnegie-Illinois and Inland, pay the 59.5-cent base rate in small plants located in the Middle West.

144

The American Steel and Wire Company; Carnegie-Illinois; the Columbia Steel Company, a subsidiary of the U. S. Steel Corporation; and the Bethlehem Steel Company carry on operations at the 60-cent rate but none of them is of outstanding size. This rate represents the smaller operations of the U. S. Steel Corporation and Bethlehem Steel on the West Coast and principally the American Steel and Wire plants in the Middle West which are not large.

The list of companies which have plants paying the 62.5-cent rate includes every large company reported in our survey with the exception of the Bethlehem Steel Company. Moreover, the operations of these large companies are very largely carried on in plants paying this base rate. The United States Steel Corporation subsidiaries carry on much

the largest portion of their operations at the 62.5-cent rate. The same thing may be said of the Republic Steel Corporation, the Inland Steel Company, and the American Rolling Mill Company. The entire operations of the following large companies are carried on in plants paying the 62.5-cent rate: Jones and Laughlin Steel Corporation, Weirton Steel Company, Wheeling Steel Corporation, and Youngstown Sheet and Tube Company.

We have already noted above on page 96 the total capacity of the large companies in the plants paying the 62.5-cent rate, and a summary of the wage data applicable to this rate will be found on pages 81 to 83. The following comparison of the ingot capacity of the large companies together with the wage data for each company will show both the enormous scale of operations carried on at the 62.5-cent rate and the relative size of the various large companies operating at this rate.

145

Name of Large Company	Ingot Capacity of large company operations at 62.5 cent base rate.	Total number of workers employed by large companies in operations at 62.5-cent base rate.	Number of common laborers employed by large companies paid 62.5-cent base rate.
U. S. Steel Corp.:			
Carnegie-Illinois Steel Corp.	20,325,900	67,768	5,124
National Tube Co.	2,400,000	13,283	18
American Steel & Wire Co.	1,417,000	11,550	354
Republic Steel Corp.	5,563,000	19,316	1,071
Jones & Laughlin Steel Corp.	3,671,200	16,090	1,886
Youngstown Sheet & Tube Co.	3,120,000	14,938	670
Inland Steel Co.	2,000,000	9,726	304
American Rolling Mill Co.	1,807,600	8,809	337
Wheeling Steel Corp.	1,500,000	16,859	2,217
Weirton Steel Co.	1,312,000	9,095	1,322
Totals	43,116,700	187,434	13,303

This table brings out the huge extent of operations which may be said to be characteristic of the industry when it is viewed in the light of employment and capacity to produce. If we were to add to this picture the large operations of Bethlehem Steel we would have accounted for the largest

part of the iron and steel industry by far. We should like to emphasize the factor of the large integrated operations in the industry because, as we have just said, this factor is the determining influence making for uniformity among the base rates and the concentrations of workers at a small number of rates.

It has been seen that the Bethlehem Steel Company occupies an outstanding position at the 56.5, 58.5 and 59.5 cent rates by virtue of a few extremely large operations. Among the large companies at the 62.5-cent rate, the Carnegie-Illinois Steel Corporation takes a commanding lead over the others judged by capacity and employment. And the United States Steel Corporation, including in addition to Carnegie-Illinois, the American Steel and Wire Company and the National Tube Company, overshadows the other large companies.

As was the case with Bethlehem, the Carnegie-Illinois Corporation operates several establishments of enormous size, the largest of which are at South Chicago, Illinois and Gary, Indiana, where the total ingot capacity is ap-
146 proximately 10,000,000 tons, and the employment 29,161 of which 3,133 is common labor paid the base rate. Carnegie-Illinois also carries on extremely large operations at Youngstown, Ohio, and in the Pittsburgh vicinity at Bessemer, Duquesne, and Munhall.

We will not attempt to set forth here an account of the extensive operations of the United States Steel Corporation, or of other large companies. These facts as to size of operations have been mentioned for the purpose of emphasizing the large operations of the industry at the few outstanding base rates in the wage tables above. But before leaving this point it should be observed that while among the large companies at the 62.5-cent base rate, the United States Steel Corporation takes the commanding lead, the other companies also engage in operations of enormous size. For instance, the operations of the Inland Steel Company at Indiana Harbor, Indiana; the Youngstown Sheet and Tube Company at Campbell, Ohio; the Republic Steel Corporation at Cleveland and Youngstown, Ohio; and the Jones and Laughlin Steel Corporation at Aliquippa and Pittsburgh, Pennsylvania.

Above the 62.5-cent rate the operations of large companies are carried on through subsidiaries in the two in-

stances where there are such operations. The Great Lakes Steel Corporation at Detroit paying the 63-cent rate is a subsidiary of the National Steel Corporation, and the Columbia Steel Company in California paying 65 cents is a subsidiary of the United States Steel Corporation.

We will not attempt to examine in any detail the position of the small and medium-sized company in the base rate structure above 54 cents an hour since it is obvious from the discussion of large companies that the small and medium-sized companies play only a minor role in shaping the outstanding concentration of workers at these higher base rates. The influence of these companies on the wage structure may be appraised from the following table which shows at each of the base rates above 54 cents the percentage of total workers and the percentage of common laborers employed in small and medium-sized companies.

Base Rate	Percentage of total workers employed in small and medium-sized companies at each base rate.		Percentage of common laborers employed in small and medium-sized companies at each of the base rates.	
	Small companies	Medium-sized companies	Small companies	Medium-sized companies
55.0	21.2	46.8	27.3	28.1
56.0	0	92.3	0	94.4
56.25	100.0	0	100.0	0
56.5	6.9	16.9	7.1	27.4
57.0	78.1	21.9	65.9	34.2
58.0	10.3	0	16.4	0
58.5	0	19.0	0	32.4
59.5	5.3	0	6.6	0
60.0	14.4	0	22.4	0
60.5	100.0	0	100.0	0
62.5	0.9	5.6	1.3	8.0
63.0	0	0	0	0
63.5	100.0	0	100.0	0
65.0	68.2	0	72.7	0
70.0	100.0	0	100.0	0

The medium-sized companies make a fairly important contribution to the operations which are carried on at the 55, 56, 56.5, 57, and 58.5 cent rates. The small companies are important at 55, 57, 60, and 65 cents. At the 56.25, 60.5, 63.5 rates and 70 cents the small companies account for the entire output. It cannot be said that the small and medium-sized companies are a negligible factor in the industry at the higher rates but in the aggregate these companies contribute little to the large operations of the industry.

The comparison of the wage areas above and below 55 cents shows that the small non-integrated company is the characteristic producing unit within the base rate scale below 55 cents and that above this rate the industry is characterized by large integrated companies operating as a rule on an exceedingly large scale. We have seen that only a few base rates in the wage scale are of primary or outstanding importance in terms of workers employed at them or of the capacity of the plants in which they are paid.

Collective bargaining makes its appearance as an applicable factor in connection with the base rate structure at the rate of 55 cents. At the lower rates the American Car and Foundry Company reported that its 48-cent base rate was the result of collective bargaining. The lowest base rate in a company reported by the Steel Workers' Organizing Committee to be under an agreement with it is the 50-cent rate paid by Henry Disston and Sons. The only other company paying below 55 cents an hour reported by the Steel Workers Organizing Committee to be under an agreement with it is the Eastern Rolling Mill Company which pays a base rate of 53 cents.

At the 55-cent rate agreements are reported by the Steel Workers' Organizing Committee for a medium-sized company and one of the companies has reported a union agreement also.

Above 55 cents union agreements are reported by the Steel Workers' Organizing Committee with one large and one medium-sized company operating plants at the 56-cent base rate, and at 56.5 cents with one large company in a small plant, and with three medium-sized companies. In addition a small company paying the 56.5-cent rate reports a union agreement.

148 At 57 cents the Steel Workers Organizing Committee reports an agreement with a small company at 58 cents with the West Coast subsidiary of the United States Steel Corporation, and at 58.5 cents with the Carnegie-Illinois Steel Corporation. One of the companies paying the 58.5-cent rate has reported a union agreement. A small plant operated by Carnegie-Illinois is the only plant covered by a union agreement at the 59.5-cent rate. At 60 cents agreements have been reported for the subsidiaries of the United States Steel Corporation.

The largest development of collective bargaining is found at the rate of 62.5 cents. The steel Workers' Organizing Committee reports agreements covering the operations of the United States Steel Corporation, Jones and Laughlin Steel Corporation, and the Wheeling Steel Corporation among the large companies and several agreements among the medium-sized and small companies at the 62.5-cent rate.

Above 62.5 cents agreements are reported for a small company paying the 63.5-cent rate and for a subsidiary of the United States Steel Corporation operating a small plant at the 65-cent rate.

Turning now to the subject of geographical location we refer back to the table on pages 79 and 84 for a detailed listing by location of the plants in which the base rates above 54 cents are paid. It will be found that the base rates are paid in the following locations:

55.0—New England; near Buffalo; central Ohio and Indiana; Kansas City and St. Louis, Missouri.

56.0—Kentucky; West Virginia; Philadelphia; western Illinois.

56.25—Central Ohio.

56.5—Sparrows Point, Maryland; Philadelphia vicinity; eastern and central Pennsylvania; northern New Jersey; Syracuse, New York; central Ohio; St. Louis vicinity.

57.0—Philadelphia and vicinity; eastern Pennsylvania; northern New Jersey; New England.

58.0—California; New England.

58.5—Johnstown, Pennsylvania; central Ohio; St. Louis vicinity.

59.5—Buffalo and vicinity; Philadelphia; central Indiana; Chicago vicinity.

60.0—Pittsburgh vicinity; Buffalo vicinity; Duluth, Minnesota; central Indiana; Chicago vicinity; Colorado[1]; Utah; California; Washington.

60.5—Central Ohio.

62.5—Chicago and vicinity; Gary and vicinity; Michigan; central Ohio; Kentucky; Cleveland and vicinity; Youngstown and vicinity; Pittsburgh and vicinity; West Virginia; New Jersey; New England.

[1] 60 cents estimated to be base rate from data contained in the Bureau of Labor Statistics survey.

149 63.0—Michigan.
63.5—Pittsburgh.
65.0—California; Michigan.
70.0—Michigan.

It will be observed that none of the rates is paid exclusively in any one geographic area except in the few instances where there is only a single plant paying one of the rates. The summary of plant location in connection with the base rates shows that each of the outstanding base rates is paid by plants spread across the Middle West and the East. For instance, 56.5, 58.5, 59.5, and 62.5 cents are paid in plants located in the Middle West and east of Pittsburgh. The Western plants are represented in the scale by the base rates of 58, 60, and 65 cents. These rates are also paid in the Middle West and east of Pittsburgh.

While it is apparent that no portion of the wage scale can be assigned exclusively to New England, or east of Pittsburgh, or the Middle West or the West, it is a fact that in a good many localities and areas over the breadth of the country one or another of the base rates is paid to more workers than is any of the other rates. The industry is spread between the four corners of the country. The geographic limits of the industry are as wide apart as Portland, Maine; Seattle, Washington; Duluth, Minnesota; and Fort Worth, Texas. There are plants in 30 states and every section of the country has a share in the production of iron and steel and their products. In some parts of the country the plants are sparsely distributed and in other places they are thickly concentrated around a center of production. The plants are located in or around the large and middle-sized cities, in small communities, and even in rural areas. It is to be expected that differences in location would be reflected in different base rates. This feature of the base rate structure has been the basis upon which a number of requests have been made for findings of prevailing minimum wages applicable to particular geographic areas.

It has been proposed that the Western States should be grouped together and a separate prevailing minimum wage be found for this geographic region (R 67). A prevailing minimum wage has been found for the South. The base rates in the Southern plants are consistently so far below

the base rate structure of the remainder of the country that it is safe to say that they reflect a combination of wage-making factors that are characteristic of the South but not of the remainder of the country. The Southern region which contains these low-paying plants is one of the broad geographic divisions that is customarily made when the country is divided on a regional basis. The West is also such a region.

The boundaries of a Western region in the iron and steel industry might be drawn down the West Coast from Seattle to Los Angeles, a distance of approximately a thousand miles, and inland to Colorado, the distance of another thousand miles. This region would contain the Western development of the iron and steel industry. But unlike the situation in the South the base rate structure in the West is on the same plane as the rate structure of the Eastern plants. Two companies in Los Angeles pay the 58-cent base rate. The plants are small but one of the operating companies is the Bethlehem Steel Company and the other is a subsidiary of the United States Steel Corporation. Reports have been received in the record for 4 plants paying the 60-cent base rate and there is evidence in the record that this is the rate paid by the Colorado Fuel and Iron Company. This company is medium-sized and with it as an exception the other Western plants are small. However, they are operated by the Bethlehem Steel Company and by a subsidiary of the United States Steel Corporation. Two of the 60-cent plants are located in the San Francisco vicinity, one in Seattle, and one in Utah. The base rate of 65 cents is paid in a small San Francisco plant operated by the Western subsidiary of the United States Steel Corporation.

The West is a separate geographic region but the base rates paid in the Western industry are not distinctly on a plane above or below the range of base rates which we have seen to be characteristic of the major operations of the industry outside the South. The 58, 60, and 65-cent rates come within the range from 55 to 70 cents. The 60-cent rate which is outstanding in the Western industry is also a familiar rate in the Middle West. The conformity of the Western base rates with the characteristic rate structure of the greater part of the industry leads us to the

conclusion that the West should not be taken separately as a geographic region for the purpose of finding a prevailing minimum wage.

It has been urged that each of the wage districts established under the code for the Iron and Steel Industry be taken as an area for finding a separate prevailing minimum wage. The applicability of the Code wage districts to the present proceedings has been discussed above at page 101 in connection with the prevailing minimum wage in the South. What was said there as to the difference between the purpose of the geographic wage districts under the Code and the purpose of the present proceedings is also pertinent here. Moreover, there have been a number of shifts in the relationships between the minimum wages of the wage districts since the expiration of the Code. Minimum wages have apparently moved upward in the Code districts described as the Canton, Massillon and Mansfield District, and in the South Ohio River District with the effect of removing the differentials that were established under the code between these and other districts in the same general area. Nor in view of the substantial uniformity among the base rates at the present time in the following Code districts would there seem to be any reason for a differential: The Colorado District, the Utah District, the Seattle District, and the San Francisco District.

Whether the wage districts of the Code be followed or some other system of geographic districting be adopted, it will be found that between a number of adjacent centers of production there are variations existing in the range of base rates and variations in the base rates that predominate. For instance in the St. Louis area base rates paid are 55, 56.5 and 58.5 cents. In view of the absence of an outstanding concentration of workers, it would be difficult to indicate the predominant base rate here, but on the whole, the base rates are lower than they are in the Chicago and Gary vicinity and also in the ring of small producing centers around Chicago and Gary, including central Indiana. In this ring of producing centers the base rates vary from a low of 55 to a high of 60 cents with a tendency toward the latter as the predominant rate. In and around Chicago and Gary the rates vary from 59.5 to 62.5, the latter being the predominant rate.

151 In the vicinity of Detroit the base rates are the highest in the country starting at 62.5 and going to 70 cents. A preponderance of the workers receive the 63-cent rate. Down through central Ohio there are a number of small producing centers where the base rates are on the whole lower than in surrounding territory. The rates in these centers are as low as 51 cents and as high as 58.5 cents with some tendency shown toward 56.5 cents. In one plant in northern Kentucky the rate of 56 cents is lower than the 62.5-cent rate in adjoining producing centers. Such centers as Cleveland, Youngstown, Pittsburgh, and Wheeling pay the 62.5-cent rate with few exceptions. The low base rates in Erie, Pennsylvania have been noted above on page 104 in connection with the discussion of base rates below 55 cents an hour.

A short distance east of Pittsburgh at Johnstown the base rate is 58.5 cents. In and around Buffalo the rates vary from a low of 50.5 cents to a high of 60 cents. A preponderant number of workers receive the 59.5-cent rate. At Harrisburg and in the immediate vicinity the base rates of 54 and 56.5 cents are paid. The latter rate predominates. To the North and Northeast of Harrisburg within a radius of 100 miles are a number of small producing centers. The base rates of these plants vary from a low of 46.5 to a high of 56.5. Three of the eight plants pay the 56.5-cent base rate and although this rate is paid to more workers than any of the other rates, it is not outstanding to any degree.

Eastward from Harrisburg within a distance of 100 miles is the important producing area in the vicinity of Bethlehem. Here the base rates are 56.5 and 57 cents with the former predominating. Southeast from Harrisburg, approximately 150 miles, is Baltimore and Sparrows Point where the base rates are 53, 54, and 56.5 cents with the latter taking the outstanding lead.

In the Philadelphia vicinity the variation in base rates is from 43 to 59.5 cents. The 56.5-cent rate predominates here. Likewise in New Jersey, although the rates range from a low of 50 cents to a high of 62.5 cents, the predominating rate is 56.5 cents.

In and around Syracuse the rates are 48.5 and 56.5 cents with the latter predominating. We have already, on page 104, had occasion to mention the low base rate area in the

vicinity of Troy, New York, the lowest wage area outside the South. The rates vary from 42 to 52 cents and it would be difficult to call any one of the rates here predominant.

The base rates in New England vary from a low of 49.5 cents to a high of 62.5 cents. The following rates are paid, 49.5, 50, 52.5, 55, 57, 58, and 62.5. In view of the distribution of workers at the various rates, it would likewise be difficult to call any one of these rates predominant, although the 55 and the 62.5-cent rates stand out about equally in the table.

These various producing centers occupy relatively small areas and none of them can be called geographic regions. It should be noted that the variations in base rates between a majority of the producing centers are not wide. The limits of the principal variations are 56.5 and 62.5 cents. It should also be noted that in most instances the variations in base rates between the producing centers are less than the variations in base rates within a single area. The question here is whether these relatively small wage variations between relatively small geographical areas should be made the basis for separate findings of prevailing minimum wages which would be limited to the locale of the variation.

152 If it were a situation in which the markets of the iron and steel industry were restricted within narrow limits to the sources of production, the varying wage rates might well be a reflection of strictly local or isolated wage structures, each one of which should be separately treated, despite the relatively small differences between the base rates. Actually, the main channels of trade in the industry take their course far beyond the confines of local producing areas. The system of delivered prices which has until recently, at any rate, determined the prices charged by the iron and steel producers for their goods is built on a series of basing points and it is the distance of the customer from these basing points that has determined the extent of the market and not, as a rule, the distance of the producer from the customer. Hence, we find it next to impossible to use the conventional measurement of miles on the map to outlines the marketing areas of the iron and steel producers. It is safe to say that the enormous expense required to build an iron and steel plant and the

large overhead required to run one call for a correspondingly large area of customers.

There are numerous statements in the record from the iron and steel manufacturers with respect to the extent of their markets and the nature of their competition.

The briefs of the Bethlehem Steel Company describe the industry as being "nation-wide in extent" (R 1249), and with reference to its own position in the industry that "the various iron and steel products that are produced at the various plants of the company are sold by it throughout the United States and in foreign countries in competition with similar products that are produced at plants of other companies located in various parts of the United States, including plants located in the South and on the Pacific Coast" (R 1215).

In a brief submitted on behalf of several small companies the following statement is made: "The market for iron and steel products is countrywide and the Eastern plant is at the end of the line and must ship materials to the West and South at prices which, including the freight, must be at equality with the competition and the market" (R 1187).

The Rustless Iron and Steel Corporation located at Baltimore states that:

"Some of the Corporation's principal competitors are located in the Pittsburgh area. In the first six months of 1938, 58% of Rustless Iron and Steel Corporation shipments were made to destinations in or west of the Pittsburgh district, and during the same period, 91% of its purchases of stainless steel scrap, an essential raw material, were received from points in or west of the Pittsburgh area." (R 1112-1113).

The South Chester Tube Company, located at Chester, Pennsylvania, makes the following statement with respect to its competition:

"The products manufactured by the Company are in demand largely in the oil and gas fields of this and foreign countries. The major portion of the Company's output is sold in Texas, California, Oklahoma, Louisiana, Kansas, New Mexico and West Virginia. The Company is in constant competition at all points with Pittsburgh mills manufacturing similar products." (R 1353)

153 Mr. Wear testified for the Harrisburg Steel Corporation at Harrisburg, Pennsylvania, that his company did not compete with the Central Iron and Steel Company, also in Harrisburg, nor with the Bethlehem plant at Steelton in the neighborhood, but that his company competed with Bethlehem on products manufactured by Bethlehem at other locations (R 335). Specifically, Mr. Wear testified that as to competition with other companies "We are competing with the National Tube Company, the United States Steel Corporation, and we compete with Youngstown Sheet and Tube, Jones and Laughlin, Pittsburgh Steel, Pittsburgh Pipe, and several other smaller companies" (R 335).

Mr. Parker for the Carpenter Steel Company stated that the competition of the plant at Reading, Pennsylvania is with Midvale and Disston in Philadelphia; Bethlehem at Bethlehem, Pennsylvania; The Crucible plants at Jersey City and Harrison, New Jersey, and Syracuse, New York; the Ludlum Steel Company at Dunkirk and Watervliet; and "several smaller companies in the Pittsburgh district, such as Vulcan, Braeburn, and Firth-Sterling, for instance" (R 361). With respect to the plant at Kenilworth, New Jersey, Mr. Parker stated that the principal competitor was the Republic Steel Corporation at Cleveland, Ohio (R 361).

Mr. Welch for the Youngstown Sheet and Tube Company stated that his company was in general competition with other steel plants (R 448).

Mr. Harding for the Crucible Steel Company of America testified as follows:

"We are in competition with almost everybody some way or other. We are in competition with Bethlehem, the United States Steel, Ludlum Company, and I could go on and name a great many, depending upon the particular specialty". (R 473).

For the Republic Steel Corporation Mr. Patton testified that the plant at Buffalo is generally in competition with other establishments (R 320). With reference to the Carnegie-Illinois plant at Johnstown, Mr. Beye stated that the products of this plant were sold in the Middle West and East (R 311).

The Continental Steel Corporation in central Indiana maintains that "being located where there is no considerable market for our finished product we must absorb extensive freight losses to supply distant customers who have been acquired and served over a period of many years." (R 1090).

In a letter from the Laclede Steel Company, located in Madison, Illinois, it is stated that: "This district (St. Louis) is between Birmingham and Chicago and must compete with both for business in our own territory." (R 774). The Sheffield Steel Corporation, with plants at Kansas City and St. Louis, Missouri, states that: "In addition to our competition with the higher mechanized Northern and Eastern mills, we are forced to compete in the Southwest, where we operate, with Southern mills which are much more highly mechanized than our mills and have a still lower minimum common labor rate of approximately 45 cents per hour." (R 566). The Granite City Steel Company in southern Illinois gives as its competitors plants in Chicago, Pittsburgh and Birmingham (R 704).

154 Mr. Boal for the Andrews Steel Company at Newport, Kentucky stated that north of the Ohio River "we are in competition with all the mills that make sheets" (R 400), and "we do not ship into the Pittsburgh district, but in Detroit, Cleveland, Chicago" (R 400). South of the Ohio River Mr. Boal stated that the principal competitors of his company are "The Tennessee Coal and Iron and the Gulf States Company. But the Tennessee is our principal competitor, of course. Some of the Eastern mills go down in there. But they are our principal competitors in the South. That is on one quality of material, known as roofing, and that is practically all we sell in the South" (R 401). Mr. Boal also stated that his plant competed with the American Rolling Mill Company in Northern territory (R 403).

Thus, the record gives us an insight into one of the outstanding features of the iron and steel industry, the widespread sweep of the market for its products. The producing areas are not also the consuming areas and the products move Westward from the East and into the East from the Middle West. From the north the products move into the South and to some extent the South sends products North (R 185).

With respect to these proceedings, the widespread operations of the iron and steel companies are brought out in striking fashion by the evidence in the record as to the bidders on government contracts for iron and steel products.

Subject to the provisions of the Public Contracts Act, the Colorado Fuel and Iron Company in Colorado and the E. J. Lavino Company in Virginia have been awarded large contracts for ferro-manganese (Exhibit E, R 29). Contracts for steel and rolling mill products, to mention only a few among many successful bidders, have gone to the Tennessee Coal, Iron and Railroad Company at Ensley, Alabama; the Kilby Car and Foundry Company at Anniston, Alabama, the Truscon Steel Company for manufacture at the Republic plant in Gadsden, Alabama; the Bethlehem Steel Company at Sparrows Point, Maryland; Steelton, Pennsylvania; Seattle, Washington; San Francisco, California; Bethlehem, Pennsylvania; Lackawanna, New York; and Johnstown, Pennsylvania; the Jessop Steel Company at Washington, Pennsylvania; the Erie Forge Company at Erie, Pennsylvania; the Eastern Rolling Mill Company at Baltimore, Maryland; the Sheffield Steel Corporation at Kansas City, Missouri; the Midvale Company at Nicetown, Pennsylvania; the Carnegie-Illinois Steel Corporation at McKeesport, Pennsylvania; Johnstown, Pennsylvania; Gary, Indiana; Pittsburgh, Pennsylvania; Duquesne, Pennsylvania; Duluth, Minnesota; Chicago, Illinois; the Lukens Steel Company at Coatesville, Pennsylvania; Jones and Laughlin Steel Company at Pittsburgh, Pennsylvania; the Youngstown Sheet and Tube Company at Youngstown, Ohio; the Republic Steel Corporation at Massillon, Ohio; Buffalo, New York; and Chicago, Illinois; the Crucible Steel Company of America at Jersey City, New Jersey; the Weirton Steel Company at Weirton, West Virginia; Henry Disston and Sons at Philadelphia; Judson Steel Corporation at Oakland, California; the Phoenix Iron Company at Phoenixville, Pennsylvania; Inland Steel Company at Indiana Harbor, Indiana. Many other successful bidders could be listed here but the names and locations of the companies above are sufficient to show that the Government requirements for iron and steel are served by plants located in all parts of the country.

The economic inter-relationships among the plants situated in various parts of the country are brought out by the evidence in the record with respect to the names and locations of companies which have bid against each other for the same Government contract (R 878-892). It will
155 be sufficient if we give a few examples of these bidders to illustrate the point that geographic location does not limit the efforts of iron and steel manufacturers to secure Government business. In the following table is given the contracting agency, the contract number, the date of the contract, the amount and the product for a number of contracts, together with the list of bidders on each contract:

Agency	Contract No.	Date	Amount (dollars)	Product	Bidders
Navy Dept.	51349	Nov. 3, 1936	18,170	Steel	Union Drawn Steel Co., Massillon, Ohio Bethlehem Steel Co., A. M. Casle (agent) Wycoff Drawn Steel Co., Pittsburgh Bliss & Laughlin, Inc., Harvey, Ill.
Navy Dept.	51392	Nov. 5, 1936	12,482	Steel	Jessop Steel Co., Washington, Pa. Allegheny Steel Co., Brackenridge, Pa. Carnegie-Illinois Steel Corp. Eastern Rolling Mill Co., Baltimore Crucible Steel Co. of America Latrobe Electric Steel Co., Latrobe, Pa. Ludlum Steel Co., Watervliet, N. Y. Republic Steel Corp., Cleveland, Ohio
Navy Dept.	51551	Nov. 14, 1936	59,542	Plates	Erie Forge Co., Erie, Pa. Allegheny Steel Co., Brackenridge, Pa. Bethlehem Steel Co.
Navy Dept.	52343	Jan. 11, 1937	26,814	Steel	Eastern Rolling Mill Co., Baltimore Allegheny Steel Co., Brackenridge, Pa. Carnegie-Illinois Steel Corp. Crucible Steel Co. of America Jessop Steel Co., Washington, Pa.
Navy Dept.	52277	Jan. 14, 1937	11,137	Conduit	Cohoes Rolling Mill Co., Cohoes, N. Y. American Car & Foundry Co., Berwick, Pa. Youngstown Sheet & Tube Co.
Navy Dept.	56979	Sept. 29, 1937	138,626	Plates, etc.	Lukens Steel Co., Coatsville, Pa. Bethlehem Steel Co. Carnegie-Illinois Steel Corp. Central Iron & Steel Co., Harrisburg, Pa. Granite City Steel Co., Granite City, Ill. Jones & Laughlin Steel Co., Pittsburgh Alan Wood Steel Co., Conshohocken, Pa. Worth Steel Co., Claymont, Del.

120.

(continued)

Navy Dept.	58129	Dec. 15, 1937	447,200	Steel Plates	Central Iron & Steel Co., Harrisburg, Pa. Bethlehem Steel Co. Carnegie-Illinois Steel Corp. Inland Steel Co., Chicago Lukens Steel Co., Coatesville, Pa. Jones & Laughlin Steel Corp., Pittsburgh Jas. T. Ryerson, Chicago Alan Wood Steel Co., Conshohocken, Pa. Worth Steel Co., Claymont, Del.
Interior Dept.	Not given	Feb. 9, 1938	60,721	Not given	Columbia Steel Co., Denver Truscon Steel Co., Los Angeles Republic Steel Corp., Cleveland Youngstown Sheet & Tube Co. Bethlehem Steel Co., San Francisco Laclede Steel Co., St. Louis Colorado Fuel & Iron Co., Pueblo, Colo.
Interior Dept.	Not given	July 22, 1938	19,027	Not given	Bethlehem Steel Co. Blue Diamond Co., San Francisco Judson Steel Co., Oakland, Calif. Laclede Steel Co., St. Louis Bethlehem Steel Co., Los Angeles. Northwestern Rolling Mill Co., Seattle Tennessee Coal, Iron & Railroad Co, Birmingham Colorado Fuel & Iron Co., Pueblo, Colo.
War Dept.	314-38-671	June 2, 1938	Not given	Not given	Sharon Steel Corp., Sharon, Pa. Weirton Steel Co., Weirton, W. Va. American Rolling Mill Co., Middletown, Ohio Jones & Laughlin Steel Corp., Pittsburgh Bethlehem Steel Co. Republic Steel Corp., Cleveland Jas. T. Ryerson, Chicago Youngstown Sheet & Tube Co. Great Lakes Steel Co., Detroit Carnegie-Illinois Steel Corp.

121.

158 The evidence presented above gives us a picture of an economically unified industry. The geographical regions are not self-contained marketing areas, nor are the various producing centers. Between the Northern and Southern geographic regions the levels of base rates were found to be so wide apart that a separate prevailing minimum wage was derived from a comparison of the base rates paid in the Southern plants. But there is nothing to parallel this situation in the industry as we look at it from East to West. The producing areas are small and especially in the Middle West and East there is a high degree of inter-competition. The West may be regarded as a geographic area but, as we have seen, there is no basic difference between the base rate level in the West and in the East. In the East a number of producing centers vary somewhat in the base rate which may be said to be predominant in these centers but, on the whole, the variations among them are not large. In only two instances in the East are the base rates in the producing centers on a substantially lower plane than in other producing centers in the same area. But in no case in the East, that is to say, the area from Chicago and St. Louis to and including New England do we find any variations on a regional basis. What we have for the most part is a goodly number of small geographic areas, among which there are variations in the base rates to a limited extent and among which there are no lines of economic demarcation. This, in brief, is the situation with respect to the geographic location of plants. We do not believe that the geographic location of the plants offers a sound basis for separate findings of prevailing minimum wages, except the geographic division that has been made between the North and the South. And we may say at this point that the separate wage applicable to the South has been recognized only because it is plainly indicated by the base rate structure of the industry. In view of the inter-regional competition between North and South, it would not be in keeping with the objectives of the Public Contracts Act if the lower wage were to be the source of an advantage in bidding for Government contracts. We recommend, therefore, in connection with the finding of a lower minimum wage for the South, that the Public Contracts Board, subsequent to a wage determina-

tion in this industry, report to the Secretary of Labor the effect of such lower wage in the South on the competition for Government business.

It has been urged especially that the Middle West and a part of the East be divided from the remainder of the East and prevailing minimum wages be found for separate geographical areas. The Wage district described in the Code as district number one has been proposed as the proper geographical basis for a separate finding of a prevailing minimum wage. This district was drawn to include the territory north of Virginia and East of a line drawn through the most easterly point of Altoona, Pennsylvania, the part of Maryland west of such line and certain counties in West Virginia (Exhibit M, p. 23). In effect, the Code district number one included the industry east of the Pittsburgh area with the exception of the areas around Johnstown and Buffalo which were separate wage districts under the Code. Thus, if the geographic areas set up under the Code were to be followed here there would be three separate areas east of Pittsburgh.

As we have seen above, the base rates in the Johnstown plants are somewhat lower than in the plants a short distance to the Westward in the Pittsburgh vicinity and somewhat higher than in the plants in the Harrisburg area, a short distance to the Eastward. The base rates in the Buffalo plants are on the whole slightly above the Harrisburg rate and somewhat above the rate predominating in the Pittsburgh and Harrisburg areas. In distance, Buffalo is not over 200 miles from these other producing centers. It has been pointed out that the predominating wages in Johnstown, Buffalo and in the vicinity of Harrisburg and Bethlehem are shaped by the extensive employment
159 in the large integrated operations of these adjacent producing centers. The predominant wages are the result of the same type of industrial operation. The base rate structure of these producing centers is fundamentally similar in character and the variations between them are minor. Distances in miles between these centers are relatively short and they cannot be said to be separate economic areas, distinct from each other, or for that matter, from the other producing centers in the industry.

With respect to the geographic area described as Code district number one we have seen that it is composed of a number of producing centers some of which exhibit a similarity of wage structure and some of which differ from each other. The strength of the base rate of 56.5 cents is found in the vicinity of Baltimore, Philadelphia, Harrisburg, Bethlehem, Syracuse and in New Jersey. But this rate is not the predominant rate in other integral parts of this geographic area. Around Troy, New York as it has been seen above there is a small producing center in which the level of base rates is lower than in any of the industry's producing centers outside the South. And in New England, which is a large segment of the Code district number one, the base rate level falls either above or below the 56.5-cent rate. If the Code district number one were to be considered as the geographic basis for a separate prevailing minimum wage, it would be necessary to cut it up into at least three separate areas in order to meet the variations among the predominant base rates. Between the Troy and the New England areas on the East and the Buffalo and Johnstown areas on the West, the area in which 56.5 cents is the predominating base rate would be confined to a relatively small area running from Baltimore through central and eastern Pennsylvania and New Jersey to Syracuse.

We do not believe that numerous producing centers and combinations of producing centers into relatively small geographic areas offer the proper foundation for the findings in the present proceedings. We refer now to the geographic areas among which there are variations in the level of base rates, whether these areas be in the East, the Middle West or the Far West. Unless there is something distinctive in the wage structure of a geographic region, or unless the economic relations of the smaller segments of the industry are provincial in character, the impelling reasons for separate findings of the prevailing minimum wage are not present.

In our survey of the base rate structure of the industry across the North and the West, we have not found that the numerous variations in base rates call for particular treatment along geographic lines apart from the remainder of the industry. On the whole, the variations in base rates

among producing centers are relatively small. The variations occur in numerous producing centers which in many instances are immediately adjacent. Competition for Government business goes on without regard for geographic lines which might serve to cut the industry into separate wage areas.

The recognition of the particular base rate levels in the considerable number of producing centers where they are a variable factor might be a satisfactory approach to the problem of minimum wages in the industry if the purpose of these proceedings was to perpetuate the local wage variations, as under the Code. But the purpose of these proceedings is to find the prevailing minimum wage which will serve the Government as an effective wage standard in its contract for iron and steel. It is necessary that the minimum wage standard for this purpose be as broad in its scope as possible. Both the requirements of the
160 Government for a wage standard and the economic characteristics of the industry's markets require that a broad view of the entire wage structure of the industry in the North and West be taken, rather than a particular view of numerous local wage levels.

Hitherto we have not dwelt at any length on the outstanding uniformity and concentration in the base rate structure of the industry. Above on page 76 it was said that none of the other base rates approaches the 62.5-cent rate in the number of plants in which this rate is paid, in the total number of workers in these plants and in the total number of workers receiving the rate. The extent of the predominance of 62.5 cents in the base rate structure is shown by the following figures. Of the 213 plants reported in the table above on page 103, the 62.5-cent base rate is paid in 101. 200,466 of the total of 299,769 workers are employed in these plants. 14,669 of the 24,747 common laborers being paid the base rates are paid the 62.5-cent rate. In terms of percentages 66.9 per cent of all the workers are in the plants paying 62.5 cents as a base rate and 59.3 per cent of the common laborers are paid the 62.5-cent rate.

We have seen above that for the purpose of finding a prevailing minimum wage which will serve the Government as a wage standard in its contracts with the iron and steel

industry the economics of the industry make it necessary to consider the base rate structure of the industry as a whole. It has developed that the base rate structure of the South requires that it be treated as a region apart. But this has not been found to be the requirement in the remainder of the industry. In the base rate structure of the greater part of the industry the 62.5-cent base rate is unquestionably the predominant rate.

It has been said that the 62.5-cent rate is not representative of the geography of the industry in the North and West. But we have seen that geography is not a primary factor in shaping the extent of the markets of the major part of the industry whatever its significance may be as a factor in the determination of the relative costs of operation. The various base rates reflect these varying costs of production and the wage standard sought after in these proceedings is derived from a comparison of the minimum wage practices of the industry. The predominating minimum wage practice that the industry has worked out for itself, as measured by the relative numbers of workers receiving the various minimum wages, is taken to be the prevailing minimum wage.

It hardly needs further comparisons to show the outstanding nature of the 62.5-cent rate but the productive capacity of the plants in which the rate is paid as compared with the total productive capacity of the industry, North and South, is as follows: The 62.5-cent plants account for 60.6 per cent of the industry's pig iron capacity, 65.7 per cent of the ingot capacity and 60.6 per cent of the finished hot rolled product capacity.

We have seen that the characteristic mode of production for the largest part of the industry was through the large company operating large integrated plants. With the exception of one large company, the principal operations in the industry are carried on in plants paying the 62.5-cent rate. We have also seen that the more important rates in the scale, 56.5, 58.5 and 59.5 cents are characterized by the operations of the second largest company in the industry and that these rates are shaped largely by the large integrated operations of this company. The 62.5-cent rate, thus, is entirely representative of the principal factor

shaping the larger concentrations of workers in the base rate table.

161 On the basis of all the evidence in the record we find 62.5 cents to be the prevailing minimum wage in the following states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Maryland, Delaware, West Virginia, Kentucky, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, Washington, and the District of Columbia.

162 VII

Reports were received from 102 companies operating 215 plants with respect to the number of workers and the classification of workers being paid rates below the common labor base rates. Of these, 34 companies operating 146 plants reported the employment of workers at wages below the base rates.

In the following table is presented the data on workers paid below the base rates for common labor. This table gives the names of the companies reporting the employment of such workers, the number of workers reported at wages below the base rates, and the classification and rates paid to such workers. A total of 3,740 workers were reported to be receiving wages below the base rates. But of this number, 458 are beyond the scope of the Act and have not been included in the table below.

127.

WAGES BELOW THE BASE RATE

Name of Plant and Location	Number of Employees Below the Base Rate	Hourly Wage	Classification and Remarks
Pittsburgh Steel Co., Pittsburgh, Pa.	29	Not given	Apprentices; learners
Sharon Steel Corp., Sharon, Pa.	1	" "	Apprentice
Jones & Laughlin Steel Corp., Pittsburgh, Pa.	3	34¢-48.5¢	3 apprentices
" " " " " Aliquippa, Pa.	147	50¢ 52¢ 56¢	9 female assorters; 35 assistant assorters 93 assorters; 7 gage pickers; 3 analyzers
Weirton Steel Co., Steubenville, Ohio	176	56-1/2¢ 54¢	171 female assorters; 5 superannuated employees
Weirton Steel Co., Weirton, W. Va.	185	56-1/2¢	female assorters
Great Lakes Steel Corp., Ecorse and Delray, Mich. (3 plants)	74	59-1/2¢ and upward	Apprentices
Wrought Iron Co., Lebanon, Pa.	29	35¢ 35-1/2¢ 41¢ 43¢ 43-1/4¢ 45¢	1 roller operator; 8 nutters; 2 pilers; 3 burring operators; 2 pointing operators; 2 wrappers; 10 threading operators 1 machinist apprentice
American Steel & Wire Co., Cleveland, Ohio	5	57-1/2¢ 60-1/2¢	1 utility girl; 4 apprentices

(continued)

American Steel & Wire Co., Allentown, Pa.	1	54-1/2¢	Apprentice
" " " " " Donora, Pa.	15	51-1/2¢	15 nail assorters
" " " " " DeKalb, Ill.	5	58¢	Binders
" " " " " Waukegan, Ill.	2	60-1/2¢	2 apprentices
	1	62¢	Sweeper
" " " " " Trenton, N. J.	1	60-1/2¢	Apprentice
Carnegie-Illinois Steel Corp., Gary, Ind.	335	51-1/2¢	3 apprentices; 3 coil keepers
		52-1/2¢	7 cover operators;
		56¢	5 apprentices; 295 assorters; 10 stampers; 9 runway operators;
		59¢	3 bloom tracers
" " " " " South Chicago, Ill.	17	51-1/2¢	5 apprentices;
		52-1/2¢	12 door operators
" " " " " Johnstown, Pa.	2	54¢	1 apprentice;
		55¢	1 special laborer
" " " " " Bessemer, Pa.	15	57-1/2¢	15 trade apprentices
" " " " " Clairton, Pa.	6	61¢	6 apprentices
" " " " " Duquesne, Pa.	11	61¢	11 apprentices
" " " " " Farrell, Pa.	78	47¢	8 assorter learners;
		56¢	70 assorters
" " " " " Irvin, Pa.	85	47¢	31 assorter learners;
		56¢	54 assorters
" " " " " Martins Ferry, Ohio	80	56¢	2 defect allocators; 78 assorters

(Continued)

Carnegie-Illinois Steel Corp., Mingo Junction, Ohio	2	61¢	2 apprentices
" " " " Munhall, Pa	54	42¢	29 door operators;
		48-1/2¢	5 helpers;
		51¢	1 rivet heater;
		57-1/2¢	11 apprentices; 8 special laborers
" " " " New Castle, Pa.	134	56¢	134 assorters
" " " " Vandergrift Pa.	19	54-1/2¢	3 steel samplers;
		61¢	16 trade apprentices
" " " " Youngstown, Ohio	37	48¢	7 test carriers;
		52-1/2¢	23 door operators;
		57-1/2¢	2 apprentices;
		58¢	3 test carriers;
		61-1/2¢	2 stock weighers
National Tube Co., Lorain, Ohio	10	53¢	Apprentices
" " " Ellwood City, Pa.	19	53¢	19 apprentices
" " " McKeesport, Pa.	13	53¢	13 apprentices
Tennessee Coal, Iron & Railroad Co., Birmingham, Ala.	43	32¢	22 trade apprentices;
		35¢	21 assorter learners
Carpenter Steel Co., Kenilworth, N. J.	3	45¢	1 common laborer;
		49¢	1 common laborer;
		55¢	1 common laborer
" " " Reading, Pa.	10	25¢	2 apprentices;
		39¢	4 apprentices;
		44¢	3 apprentices;
		49¢	1 apprentice

129.

(continued)

American Tube & Stamping Plant,	Bridgeport, Conn.
Youngstown Sheet & Tube Co.,	Chicago District
" " " " "	Youngstown District
Crucible Steel Co. of America,	Harrison, N. J.
Sheffield Steel Corp.,	St. Louis, Mo.
American Rolling Mill Co.,	Middletown, Ohio
Wheeling Steel Corp.,	4 Ohio plants

38	45¢	3 superannuated employees;
	50¢	35 " "
102	47-60-1/2¢	Female workers and apprentices; 81 of 102 receive 56¢ per hour, 6 receive less than 56¢, and 15 receive more than 56¢
33	45-61¢	Female workers and apprentices; 12 of 33 receive 52¢ per hour and 9 of 33 receive 53-1/2¢ per hour; the remainder varies from 45¢ to 61¢ as shown.
10	35¢	2 apprentices;
	35-1/2¢	1 learner;
	45¢	6 apprentices;
	48¢	1 learner
7	50¢	6 laborers;
	53¢	1 laborer
22	52¢	1 apprentice;
	54¢	5 apprentices;
	57¢	10 apprentices;
	59¢	1 apprentice;
	60¢	5 apprentices
305	42-1/2¢	1 female employee;
	48-1/2¢	44 class C female assorters;
	50-1/2¢	6 apprentices;

(continued)

Wheeling Steel Corp., 4 Ohio plants (Con'd.)	
" " "	2 West Virginia plants
Inland Steel Co.,	Indiana Harbor, Ind.
Republic Steel Corp.,	Gadsden, Ala.
" " "	Chicago, Ill.
" " "	Monroe, Mich.
" " "	Canton and Massillon, Ohio
" " "	Niles and Warren, Ohio

	52¢	4 apprentices;
	53-1/2¢-60¢	14 apprentices;
	52-1/2¢	27 class B female assorters;
	56-1/2¢	209 class A female assorters
1	50¢	Apprentice
105	55¢	2 apprentices;
	56¢	86 female assorters;
	57¢	3 apprentices;
	58¢	3 apprentices;
	59¢	7 women weight pickers;
	62¢	4 apprentices
9	30¢	1 apprentice;
	31¢	8 apprentices
14	55-1/2¢	1 apprentice; 2 billet paint and stamp boys; 5 metallurgical students;
	58-1/2¢	3 apprentices;
	59-1/2¢	2 apprentices;
	61-1/2¢	1 apprentice
4	55-1/2¢	1 apprentice;
	61-1/2¢	3 apprentices
3	55-1/2¢	1 apprentice;
	56¢	1 apprentice;
	58-1/2¢	1 apprentice
150	53¢	18 assorters;
	56¢	124 assorters; 4 clerks and scale girls; 2 floor ladies;
	59-1/2¢	2 apprentices

(continued)

132.

Republic Steel Corp., Youngstown, Ohio

Bethlehem Steel Co., Bethlehem, Pa.

" " " Coatesville, Pa.

" " " Johnstown, Pa.

" " " Lebanon, Pa.

" " " Sparrows Point, Md.

" " " Steelton, Pa.

Granite City Steel Co., Granite City, Ill.

1	55-1/2¢	1 apprentice
114	40¢	83 apprentices;
	45-1/2¢	27 apprentices;
	50-1/2¢	3 learners;
	51¢	1 apprentice
1	47-1/2¢	Forgeman helper
128	45-1/2¢	12 apprentices; 6 assorters;
	51¢	77 apprentices; 1 forelady; 2 stencil boys;
	56-1/2¢	30 apprentices
13	37-1/2¢	2 apprentices;
	43¢	8 apprentices;
	51¢	3 apprentices
329	40¢	21 apprentices;
	45-1/2¢	26 apprentices;
	51¢	8 assorters; 24 apprentices;
	54¢	1 forelady;
	55-1/2¢	249 assorters
35	40¢	12 apprentices;
	45-1/2¢	22 apprentices;
	50-1/2¢	1 yard cleaner (handicapped)
4	55¢	1 superannuated load inspector; 3 checkers;
1	57-1/2¢	1 scrap weigher

(continued)

Braeburn Alloy Steel Corp., Braeburn, Pa.

133.

Latrobe Electric Steel Co., Latrobe, Pa.

Apollo Steel Co., Apollo, Pa.

Milton Mfg. Co., Milton, Pa.

Phoenix Iron Co., Phoenixville, Pa.

Buffalo Bolt Co., North Tonawanda, N. Y.

Superior Sheet Steel Co., Canton, Ohio

Chapman Price Steel Co., Indianapolis, Ind.

Erie Forge Co., Erie, Pa.

Erie Forge & Steel Co., Erie, Pa.

Worcester Pressed Steel Co., Worcester, Mass.

Calumet Steel Co., Chicago Heights, Ill.

The Pollak Steel Co., Marion, Ohio

7	55¢	2 apprentices; 5 female inspectors
4	58-1/2¢	Apprentices
3	45¢	Sweepers
26	Not given	19 women nutting bolts; 6 women machine operators 1 apprentice
8	45¢ 55-1/2¢ 56-4/10¢	4 apprentices; 3 apprentices; 1 store room helper
115	Not given	Machine tenders; bolt and nut sorters
1	" "	Not specified
4	" "	" "
2	" "	2 apprentices
9	" "	9 apprentices
7	" " " "	6 light press operators; 1 sweeper
10	40¢ upward	Apprentices
10	40-50¢	Messengers and superannuated employees

170 The workers being paid wages below the base rates are employed in large, medium and small-sized companies and in plants located in all parts of the country. However, it is in the plants of the large Eastern companies that most of the workers receiving rates below the base rates are found. This is due, no doubt, to the fact that these companies produce the bulk of the tin plate produced by the industry and employ a majority of the apprentices employed in the industry. It is certain workers employed in the tin plate mills and the apprentices that account for the greatest portion of the workers being paid at wages below the common labor base rates.

In the tin plate plants women are employed as assorters. The wages of assorters are generally ten per cent below the wages of common labor. This is the general practice of the industry, for instance, when the base rates are 62.5 cents the assorters will be paid 56.5 cents. Approximately 90 per cent of the assorters reported receive from 55.5 to 56.5 cents an hour, inclusive, showing that this classification of workers is found primarily in the higher wage-paying sections of the industry. In fact, 80 per cent of the assorters are employed in plants where the base rate for common labor is 62.5 cents an hour. The assorter classification is regarded as a distinct group and is discussed in the record at pages 26, 292, 314, 446, 615, and 639. Of the 3,282 workers paid less than the base rates for common labor to whom the provisions of the Act might be applicable, 1,871 are classified as assorters.

Since the basis of the wage determination here is the common labor base rate, it has not been thought advisable to combine with these rates the lower rates of the assorters. It has been found that the Government has purchased no tin plate subject to the provisions of the Act and, hence, the production of tin plate has been excluded from the definition of the industry adopted as applicable in these proceedings. We would recommend, however, that further study be made of the rates paid assorters in the production of tin and if investigation should indicate the desirability of including the production of tin plate within the scope of a wage determination for the iron and steel industry that further findings and recommendations be made by the Board in this matter.

714 apprentices were reported to be receiving wages below the base rates. Apprentice rates may go higher than the base rates but where these were reported we have not considered them in the analysis here. The lowest apprentice rate reported is 25 cents an hour. Apprentice rates as reported covered a wide amount of variation. The data showing the number of apprentices do not exhibit any special tendency to concentrate at any particular rate or rates. The 714 apprentices referred to here are employed by 21 companies. The types of apprenticeship in the reported plants were discussed in the record on pages 244, 245, 617, 618, 619, 631, 639, 640, 648, 652, 657, 662, 678, 679, 716. From this discussion it would seem clear that apprenticeship in the iron and steel industry has a well-defined and well-understood meaning. It would seem that a general practice of the industry would be adhered to if apprenticeship were considered for the purposes of these proceedings to be a system of employment and training which is in conformity with the standards of the Federal Committee on Apprenticeship. We recommend that an allowance be made in the determination of this case for the employment of apprentices at wages less than the prevailing minimum wages, provided that the employer has on file an active indenture entered into in accordance with the standards of the Federal Committee on Apprenticeship.

171 VIII

In a number of briefs and through testimony at the hearing it has been urged that the small and medium-sized iron and steel producers be given consideration in a category apart from the large companies (R 11, 237, 263, 331, 348, 378, 489, 558, 696, 697, 706; 710, 714, 756, 758, 775, 817, 1091, 1140, 1177).

It is contended by some of the companies referred to above that their plants occupy a geographic position which places them at a disadvantage in the marketing of their products. And the contention is generally advanced that as compared with the few large companies in the industry the smaller companies carry on under the handicap of less efficiency and greater costs of production.

The evidence in the record has permitted us to give detailed consideration to the factor of plant location as it

is related to the base rate structure of the industry and the findings of prevailing minimum wages made above in Section VI have been made in the light of the location factor. With respect to the possible lower efficiency and greater costs of the smaller as compared with the larger companies, there is very little evidence in the record which would throw light on the situation. The facts which would support or disclaim this contention were not put into the record of these proceedings by the interested parties. Furthermore we do not know from the record whether less efficiency and greater costs, if established by the facts, would furnish a valid reason for the separate consideration of the smaller company in the determination of the industry's prevailing minimum wages.

We believe that the position of the smaller companies in the competition for Government business as it is affected by the prevailing minimum wages found above should be made the subject of further study and, if necessary, further findings and recommendations. We recommend a further study of this question for the following reason. The prevailing minimum wages found above in Section VI, as has been pointed out, have been shaped primarily by the large integrated operations of the large companies. The overwhelming position of the large companies in the industry sets the pace for the industry and this is as true with respect to the minimum wages prevailing as it is of the other phases of operation in the industry. It has been very distinctly brought out in the analysis of factors influencing the minimum wage structure of the industry that the smaller company exerts a negligible influence in shaping the uniformities and concentrations in the base rate scale from which the prevailing minimum wages have been derived.

The smaller iron and steel companies have, of course, a resort to Section 6 of the Public Contracts Act as a means of securing relief from the application of the prevailing minimum wages found above to their contractual relations with the Government. As a matter of fact, this avenue of relief is open to all members of the industry regardless of size.

By recommending further study of the position of the smaller companies we do not mean that the application of

the minimum wages found here to be prevailing should be held up pending the results of such study. The minimum wages in this industry, as we have seen, prevail regardless of the wage data of the smaller companies. Furthermore, the study suggested would be concerned primarily with the effect of the wage determination on the competitive position of the smaller companies in bidding for Government contracts.

---

172 Recommendations of the Public Contracts Board to the Secretary of Labor in the Matter of Prevailing Minimum Wages in the Iron and Steel Industry.

In view of the Findings of Fact made above, the Public Contracts Board respectfully recommends to the Secretary of Labor that the following wages be determined, within the meaning of section 1(b) of the Public Contracts Act, to be the prevailing minimum wages for the manufacture or furnishing of the products of the Iron and Steel Industry.

(1) 45 cents an hour within the area made up of the States of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, and Virginia.

(2) 62.5 cents an hour within the area made up of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Maryland, Delaware, West Virginia, Kentucky, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, Washington, and the District of Columbia.

The Board recommends further

(1) that the minimum wages paid in the manufacture of tin plate, tin mill black plate, and terneplate be given further study in order to determine whether or not such minimum wages should be made the subject of separate Findings of Fact by the Board;

(2) that subsequent to a determination that the prevailing minimum wages in the Iron and Steel Industry are 45 cents in the South and 62.5 cents in the remainder of the

industry, a study, and if necessary, further Findings of Fact be made with respect to the effect of the lower minimum wage on the competition in the industry for Government business;

(3) that subsequent to a wage determination for the Iron and Steel Industry, a study be made of the position of the smaller companies in the competition for Government business in order that the Board may be placed in a position to advise the Secretary of Labor with respect to requests for exemptions under section 6 of the Act, should the occasion arise;

(4) that an allowance be made in the determination of this case for the employment of apprentices at wages less than the prevailing minimum wages, provided that the employer has on file an active indenture entered into in accordance with the standards of the Federal Committee on Apprenticeship.

173 The Above Findings of Fact and Recommendations are Respectfully Submitted to the Secretary of Labor

THE PUBLIC CONTRACTS BOARD
THOMAS HOLLAND
ROBT. N. CAMPBELL

174 Opinion of Minority
in the Matter of Prevailing
Minimum Wages in the Iron and
Steel Industry

The Board has given much time and study to the testimony made available to it in the public hearing of the iron and steel industry. It has also studied the briefs and other communications submitted subsequent to the hearing in accordance with permission extended for the presentation of such material. I am in agreement with the majority of the Board that the information before it is entirely adequate for a finding of the prevailing minimum wages in the industry. No differences of opinion arose in the Board over analysis of the testimony which were not or could not be reconciled. The Board is agreed on all the essential facts before it in the case.

In weighing these facts, in judging the comparative value of certain deviations from the predominant wage prac-

tices, and in appraising the extent of influence of possible alternate geographical divisions, especially in the various phases of competitive advantages or disadvantages in bidding on government contracts, on the other hand, divergencies of opinion developed. While there was no disagreement on the general question of the recognition of geographical wage differentials, differences arose with respect to the number of such differentials and the delimitations of the various districts or regions to which each wage would be applicable.

Any case such as the present one, in which minimum wages show a varying lack of uniformity, very narrow and unusual in some sections, and wider and rather common in others, gives ample occasion for differences of opinion with respect to proper segregation of wage areas. While it might be thought that the law itself disposes of these questions, and that the function of applying the law should be limited to the finding of facts, the matter in reality is not so simple. Diversity of facts, not only within localities but between localities and groups of localities, irregular contours of regions in which various parts of the industry are concentrated, and other variations, made the exercise of judgment in this case, as they would in any similar case, inescapable. No more statistical operation was sufficient to dispose of the issues. In some instances, in the present case an almost equal weight of contrary considerations impelled the judgment in opposite directions on a single point at issue. Elements extraneous to the statistical aggregates had therefore to be drawn upon to break the deadlock.

For example, one principal point of difference between the majority of the Board and the minority lay in the question of recognizing or not recognizing wage differentials in certain sections and not in others. It became a question not only of what magnitude of wage differences should justify the recognition of differentials, but of what complexion of wage frequencies in respect of company size and location, of what degree of predominance of given base wages in terms of numbers receiving them within a given region, should be deemed worthy of recognition. The same wage difference in one section might justify recognition and yet not in another. The frequency with which the differences occurred, the size of the plants involved, espe-

cially with respect to employment, location of the plants relative to the plants which observed different base rates, segregation or nonsegregation of the plants paying the same or similar rates in point of geographical location, uniformity or non-uniformity of differences within a given area—all these variables might congregate or fail to congregate in a manner to justify or not to justify recog-
175 nition of a differential. Nor is the magnitude of the difference in wages, for this reason, necessarily the determining factor; for a considerable difference within one region might be the exception, and in that case it would not rule, it would not set the pattern. A smaller difference within another region, on the other hand, might be so uniform and so general among plants located therein as to constitute it a proper one for recognition as a differential.

In the present case, the lower base wages generally paid in the region lying east of what is generally known as the Pittsburgh district, constitute it, in my opinion, a separate region with respect to the prevailing minimum wages. The majority of the Board does not so conclude.

The facts are given in the body of the Recommendations and require only very brief mention here.

The eastern district (as represented in the large sample before the Board), contains 59 plants employing 53,518 workers. Of these, 18 plants employing 38,069 workers pay a base rate of 56½ cents an hour. An additional 29 plants, employing a total of 7,647 workers pay base rates below 56½ cents; 5 plants employing 4,005 workers pay a base rate of 57 cents. Only 7 plants with 3,797 workers pay base rates over 57 cents an hour. Of these 7 there are 5 plants with 3,602 workers which pay 62½ cents.

The wage structure of this section with respect to base rates contrasts with the section to the west, exclusive of the far west, as follows:

This section, including Johnstown and Buffalo, (as represented in the data before the Board), has 147 plants employing 241,340 workers. Of these there are 96 plants employing 196,864 workers which observe a base rate of 62½ cents an hour. These plants are located from Pittsburgh west through Ohio and West Virginia, Indiana, and Illinois. Within this expanse there are only 3 plants having a base rate of 56½ cents and these plants employ only 878 work-

ers. The predominance of the 62½-cent rate is overwhelming. The only other base rates of any appreciable magnitude in point of employment are 58½ cents, 59½ cents, 55 cents, and 63 cents. Five plants with 11,005 workers have a base rate of 58½ cents; 7 plants with 9,721 workers have a base rate of 59½ cents; 7 plants with 5,684 workers have a base rate of 55 cents; and 3 plants with 4,961 workers have a base rate of 63 cents. The greatest concentration at any point other than 62½ cents is at 58½ cents, and the 5 plants with the latter base rate employ only 4.6% of the total number of workers in this region. The 99 plants, on the other hand, which observe a base rate of 62½ cents employ 81.6% of all the workers in the entire region. (Because of the tendency towards constancy of the proportion of employes at the base rate to the total, I have used totals instead of the number as the base rates, for the sake of simplicity.)

Here we have, in my view, two distinct regions with respect to the prevailing minimum wages. The contrary view, held by the majority, is that the rate of 62½ cents clearly predominates even if the region to which it is made applicable is extended to the Atlantic seaboard. This is demonstrably true. If the eastern section is added to the western, we have 206 plants employing 294,858 workers, and of this number 200,466 are employed in plants which adhere to the 62½ cent rate. In other words, the plants with this base rate employ 67.9% of all the workers. The plants with a base rate of 56½ cents, as has already been stated, employ only 38,947 workers or 13.2% of the 294,858 total. Obviously, the 62½ cent rate predominates,
176 even if the area of application is extended to the Atlantic seaboard. But so would it also still predominate if it were extended to the Gulf of Mexico and so be made to include the Birmingham area. But here common sense steps in and impels us to conclude that the gap between 45 cents and 62½ cents is too wide to be compromised or bridged. The question then would appear to be one of comparative magnitude of the actual difference between rates; but that is not the case. A 30-cent rate paid by a small company within the 62½ cent area could not affect the results. The question is rather a combination of

magnitude, frequency, uniformity and of other factors, mostly extraneous to statistics.

A question worth inquiring into, in view of the foregoing, is the greater relative predominance of the 62½ and 56½ cent rates (1) respectively in their own regions, and (2) of the 56½ cents in its own region, i. e., the eastern, and the 62½ in the western and eastern regions combined.

It has already been shown that the 62½ cent is the base rate of plants in the western region employing 81.6% of all the workers in that section. The 56½ cents, on the other hand, is paid by plants in the eastern region which employ only 71.1% of the workers in that area. Reference to the consolidated tables in the body of the Recommendation, however, shows that in the eastern region 4,005 additional workers are employed in plants with a base rate of 57 cents, a rate that is only ½ cent removed from the 56½ cent rate. If these 4,005 are added to the 38,069 at the 56½ cent rate, (a wholly reasonable consolidation), the plants employing these 42,074 workers will be found to have 78.6% of the total workers in the district. This compares favorably with the 81.6% in the case of the 62½ cents. On the other hand, in the western district plants employing 4,961 workers have a base rate of 63 cents, which is only ½ cent removed from 62½ cents. If these 4,961 are added to the 196,864 in the plants with the base rate of 62½ cents, we have a total of 201,825 or 83.6% of the total. The respective percentages of the 56½ (including 57) cent rate and of the 62½ (including the 63) cent rate, are therefore 78.6 and 83.6, and give us little to choose between.

If now we extend the western section to include the eastern we find the predominance of the 62½ cent rate reduced to 69.7%.

Now, obviously, should we rely purely on statistical aggregates, we would be confronted with no decisive divergence between these respective degrees of predominance. It is true that the 56½ cent (including the 57 cent base) predominates in the eastern region by about 10 percentage points over the 62½ cent (including the 63 cent base) rate in the western and eastern regions combined; but each rate predominates sufficiently in its area to be accepted as the prevailing minimum wage.

Consequently, in order to reach a conclusion, elements extraneous to the statistical results, as has already been said, must be given consideration. We must make a choice between frames of reference. Why should the Birmingham or Southern region be separated from the remainder of the country while the eastern region is merged? One reason has already been stated: the gap between 45 cents and 62½ cents is much greater than that between 56½ cents and 62½ cents. But that fact only imposes the question of how wide a difference must be in order that it should be recognized as a differential, other things being equal. In my opinion, a 6-cent differential qualifies a region for separate recognition if there are no countervailing factors of sufficient weight to overbear its significance.

177 It has been shown that there is little choice, statistically speaking, between the 62½ cent and 56½ cent rates, in point of relative predominance. If a 6-cent differential is of sufficient magnitude to justify its recognition by a separate wage determination for the area in which it is found, as I think it is, what factors could be present to overcome the differential? Evidently they are (1) the competitive advantage presumably inherent in the lower rate and (2) the danger to the higher wage structure lurking in this competitive advantage.

The Public Contracts Act contemplates the elimination of competitive advantage accruing to firms bidding on government contracts in excess of $10,000, if the advantage is derived from the payment of minimum wages which are below the *prevailing* minimum wages. The purpose is to protect the competitive position and therefore the wage structure of those firms which do adhere to minimum wages which are not lower than the prevailing minimum wages.

The law also permits the division of the country into localities for the purpose of determining minimum wages. No rule is laid down to define the extent of any locality; but common intelligence leads to the conclusion that in delimiting localities the realities of the wage structure in each industry should be taken into consideration. A too minute concept of locality would obviously nullify the law, for each plant must necessarily occupy a different locale or site from every other. To reduce the interpretation of locality to its most minute point would be to find a mini-

mum wage prevailing in each plant. This would be absurd. But when we deviate from this interpretation we are immediately thrown upon judgment. If more than one plant are to be considered together, how many may properly be considered together? How large a territory may be included in this merger?

Obviously, we must look for wage patterns or uniformities. If these exist, the problem is simplified. If they do not exist, and if there is no pattern, no satisfactory locality differentials can be drawn. If they do exist, there may yet be a varying number of exceptions to the predominant pattern. How should these exceptions be treated? Again judgment must be relied upon for the answer. What are the competitive factors involved in these exceptions? How important in point of magnitude and relative frequency are the exceptions? Can they be safely ignored? How far can differentials be recognized without violating the principal purpose of the law, which, as has been stated, is to prevent the firms which pay minimum wages below the prevailing minimum wages, from enjoying a competitive advantage?

These are not problems of differential calculus. They are questions of fact and judgment combined. Determinative elements lie in marketing radius, freight rates, the proportion that wages bear to selling price, etc.

In the light of these questions, we approach the question of the eastern area. If the firms located in that area are given separate treatment, if this area is to be recognized as a separate wage locality, will the effect tend to nullify the principal purpose of the Public Contracts Act? This question may best be answered by inquiring whether these firms do now enjoy a greater share of sales to the Government than their comparative size in point of output or capacity would allocate to them? If they do not, it may then be assumed that a continuation of the already established competitive equilibrium, such as would be assured if the 56½ cent rate were recognized as a differential, would not confer an advantage not already present. The status quo would remain undisturbed. No competitive advantage would be added or subtracted from the existing condition.

178 The allegation was made in the public hearing by the Steel Workers' Organizing Committee that the firm which in point of size predominates the eastern area, namely, the Bethlehem Steel Corporation, has obtained government contracts in excess of its proper share if the latter is judged by ingot capacity. This allegation was categorically denied by citation of relevant statistics in a brief filed by the company.

It is possible, of course, that because of specialization by product or because of the specialized equipment possessed by some of the smaller firms, adapting them especially to the production of certain steel products required by the Government, some of these firms may obtain a disproportionately large share of government contracts; but the decisive competitive factor in such cases would be specialization and not wages. Such firms would be successful bidders against the Bethlehem Corporation no less than against other corporations in the industry.

The evidence failed to establish as a fact that competitive advantages are enjoyed by the Bethlehem Steel Corporation because of the payment of lower wages by that firm. Until such evidence is produced, it cannot be assumed that it exists as a fact.

Competitive items which would otherwise confer advantages to firms located in the eastern district might be found in nearness to large consuming centers, comparative cheapness of iron ore, or in more economical production equipment. Disadvantages might lie in greater distance from raw material supplies, especially coal and iron ore, and greater distance from the western market. Possibly the new system of basing points recently established might confer or withdraw additional advantages.

But the Board does not have before it essential information on these points. It does know that the minimum wages prevailing in the eastern area are lower than those of the western area. If these lower wage rates could be shown to confer a competitive advantage in bidding on government contracts upon the companies operating in the eastern area, the necessary conclusion, in view of the object of the law, and in view of the general admission that the firms in the east compete extensively with those in the western area—the necessary conclusion, to repeat, would

be that no differential should be recognized. But no such showing has been made.

My conclusion, therefore, is that the eastern section should be recognized as a separate area and that the wages prevailing there should determine the rate that is to be established as a minimum for the region. Failure to effect this segregation, with the consequence that the minimum rate would be elevated to 62½ cents from 56½ cents or less, would confer a competitive advantage to a degree measured by the amount of wage readjustment which would be required in the east, upon the plants located in the western area. This effect could not be justified under the Act unless it could be shown conclusively that the result was no more than elimination of a condition which the Act was designed to accomplish. But if the existing competitive equilibrium has not placed a disproportionate share of government contracts into the hands of the eastern producers, the inclusion of the eastern area under the 62½ cent rate would be a gratuitous disruption of a wage structure which is not sweatshop in character and a gratuitous injury to firms which are not now engaged in wage practices which are the target of the Act.

To overlook, ignore or dismiss this conclusion involves either the assumption that a continuation of the 56½ cent rate would in the future confer a competitive advantage in government contracts upon the firms paying that
179 rate which the payment of that rate does not now confer, or the belief that continuation of this rate would in time undermine the 62½ cent rate. Such assumption or belief can find no support of fact in the evidence. Alternately, it appears to the minority, the forcible merging of the eastern with the western section would introduce a reallocation of comparative competitive advantages not in accordance with the object of the law, not confined to the end that objectionable competition would be eliminated but with the effect that an unearned and gratuitous advantage would be given to one area at the expense of another.

The Public Contracts Act is not a wage-raising Act as such. Such increases in wages as may be required as a result of minimum wage determinations under it are incidental to its principal purpose. If all firms in an appro-

priate area were found to pay the same minimal wage, the Act would require no increase in wages at all. In fact, such a condition has not been encountered in the experience of the Board; in all instances to date some increase in minimum wages has been required. But this has been the result of the non-uniform character of the various wage structures encountered, and not of any legal provision of the Act requiring elevation of minimum wages as such.

In view of the foregoing, the minority of the Board is of the opinion that the 56½ cent rate should be applied to the eastern section, so-called, comprising that part of the United States lying east of a line drawn north and south through the most easterly point of Altoona, Pennsylvania, to the northern boundary of the State of Maryland; and the States of Maryland and Delaware, with such exceptions as may be provided for through special exemptions or limitations.

Another difference arose in the Board with respect to the mid-western area located in the States of Indiana, Missouri, Southern Illinois, and Kentucky. The majority has concluded that the 62½ cent rate prevails in this area no less than in the adjoining states to the North and East. The facts are not dissimilar to those reviewed above in the case of the eastern and western areas. The various considerations of competition, location, etc., are also very similar.

A brief summary will suffice for the present purpose, since the essential facts are presented in the body of the Recommendation. Five plants in Missouri and southern Illinois, employing 5,074 workers adhere to base rates ranging from 55 cents to 58.5 cents. Of these, two plants employing 2,160 workers pay a base rate of 55 cents; one plant with 2,089 workers, pays a base rate of 58.5 cents. Two plants, with a total of 825 workers, pays 56.5 cents.

There is no base rate of 62.5 cents in the neighborhood. The range in actual rates is only 3.5 cents.

In central Indiana are located three plants which have a base rate of 55 cents. Their total employment is 2,456. A fourth plant employs 80 wage earners with a base rate of 60 cents. In northern Kentucky is one plant employing 2,500 workers at a base rate of 56 cents an hour. In both instances no plant with a base rate of 62½ cents is found within a considerable distance, with the exception of the

Kentucky plant. It is situated at no great distance from a plant in southwestern Ohio which has a base rate of 62½ cents; and in northeastern Kentucky is a plant which also has a base rate of 62½ cents.

180 An examination of Government contracts awarded during the past two years reveals no disproportionate share won by the firms referred to above. In fact, some of the firms have won no awards during that period of time.

For reasons similar to those offered in support of a differential applicable to the Eastern area the minority concludes that a differential is justified in the area under review here, and that denial of a differential would be contrary to the proper application of the law.

We find in the area here referred to 10,110 workers, employed by 10 plants. Of this number of workers, 4,616 are employed by plants which adhere to a 55-cent base rate; 2,500 by a plant with a base rate of 56 cents; 825 by plants paying a base rate of 56.5 cents; 2,089 by a plant paying 58.5 cents; and 80 by a plant paying 60 cents.

The most commonly paid rate is obviously 55 cents; and the minority of the Board is of the opinion that this rate should be applied to the States of Missouri and that part of Kentucky lying west of a line drawn north and south through the westernmost point of Boyd County; to that part of the State of Indiana lying south of a line drawn east and west from the northern boundary of Howard County; and to that part of Illinois lying south of a line drawn east and west from the northern boundary of Fayette County.

A third difference, one of a minor degree, relates to the far western area. The majority recommends a rate of 62½ cents. The facts are given in the body of the Recommendation and need not be repeated here, except in summary form. Of 4,911 workers reported to the Board in that area, 3,326 are employed by firms which pay a base rate of 60 cents an hour. 1,495 are employed by firms paying 58 cents, and 90 by a plant with a base rate of 65 cents.

I am of the opinion, in view of these facts, and in view of the great distance separating the far west from the nearest plants to the east, that a separate minimum should be applied to the Western States. The rate should, in my

opinion, be 60 cents and should apply in all the states lying west of Minnesota, Iowa, Missouri, Oklahoma, and Texas.

O. R. STRACKBEIN
Member Public Contracts Board

(541)

181 *Exhibit C*

United States Department of Labor
Division of Public Contracts

In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry

---

Petition of Committee Representing Small Eastern Producers of Iron and Steel Products for Reopening of Hearing.

182 United States Department of Labor
Division of Public Contracts

Petition for Reopening of Hearing

In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry

To the Administrator, Division of Public Contracts

Sir:

A public hearing in the above-entitled matter was had before the Public Contracts Board on July 25 and 26, 1938. Subsequent to the hearing the Record was held open until August 8, 1938 for the submission of wage data and other evidence. The Record was then closed and interested parties were allowed until August 22, 1938 to file briefs. Under date of October 27, 1938 the Public Contracts Board made its Findings of Fact, Conclusions and Recommendation for the consideration of the Secretary of Labor.

The first notice that the members of the Iron and Steel Industry who are represented by your petitioners re-
183 ceived of such Findings of Fact, Conclusions and Recommendation was by a notice dated November 7, 1938, addressed by you to "All Persons Interested in the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry," with which there was enclosed a press release of the United States Department of Labor numbered (5603) and marked "For release Sunday, November 6, 1938". Such notice stated that briefs might be filed with the Administrator within 21 days from the date thereof, or until November 28, 1938, at which time the Board's recommendations, together with such briefs, would be forwarded to the Secretary of Labor. Your petitioners promptly requested of the Administrator that they be furnished with the full Report containing the Board's Findings, Conclusions and Recommendation, but such Report was not released until November 19, 1938, and copies thereof were not received by your petitioners before November 22, 1938. The notice of the Administrator dated November 19, 1938, which accompanied such copies stated that the time for filing briefs had been extended to December 10, 1938.

In addition to a recommendation for certain prevailing minimum wages in the Iron and Steel Industry the majority report of the Board makes certain additional recommendations, among which are the following (Report, p. 136):

"(2) that subsequent to a determination that the
184 prevailing minimum wages in the Iron and Steel Industry are 45 cents in the South and 62.5 cents in the remainder of the industry, a study, and if necessary, further Findings of Fact be made with respect to the effect of the lower minimum wage on the competition in the industry for Government business;

"(3) that subsequent to a wage determination for the Iron and Steel Industry, a study be made of the position of the smaller companies in the competition for Government business in order that the Board may be placed in a position to advise the Secretary of Labor with respect to requests for exemptions under section 6 of the Act, should the occasion arise;"

In view of the Findings of Fact, Conclusions and Recommendations made by the Board, and in view of the specific

recommendations for further study of certain features, it is, on behalf of small Eastern producers of iron and steel products, respectfully requested that the Administrator of the Division of Public Contracts resubmit the above-entitled matter to the Public Contracts Board for further investigation, hearing and recommendations. We hereinafter set forth our reasons for that request. We believe that they are so impelling as to require that the request be granted.

185

I.

The recommended study of the position of the smaller companies in the Industry should be completed and appropriate recommendations based thereon should be made by the Board before the determination shall be promulgated by the Secretary of Labor, because the proposed determination will preclude the smaller Eastern producers of iron and steel products from competition for Government work.

Your petitioners believe that the majority of the Board in its Findings of Fact and Recommendations has not properly applied the provisions of the Public Contracts Act because it has failed to recognize and give effect to long existing wage differentials among the various localities in which the products of the Steel Industry are manufactured or furnished. The position of your petitioners in that regard will be more fully set forth in the exceptions and briefs which shall be filed on their behalf.

In its Report the majority of the Board indicates that chief among its reasons for recommending a uniform minimum wage for the entire North and West of the country are the existence of general competition among the plants in that region and the belief that "the requirements of the Government for a wage standard and the economic characteristics of the industry's markets require that a broad view of the entire wage structure of the industry in the

186 North and West be taken, rather than a particular view of numerous local wage levels". (Report, p. 124). As we have pointed out above it is our contention that the position thus taken by the majority of the Board is not the correct position under the Act, but, if it is correct, then it is submitted that, before recommending that the Secretary of Labor make a determination of a uni-

form prevailing minimum wage for the North and West, the Board is bound to obtain adequate evidence with regard to, and to give due consideration to, the probable effect of such determination upon competitive conditions in the Industry. In making its recommendation for a further study of the position of the smaller companies in the industry the Board concedes that it has not as yet obtained adequate evidence on which to determine the effect of the proposed determination upon the competitive positions of the smaller companies.

In Section VIII of its Report (p. 135) the majority of the Board makes certain findings and conclusions concerning a future consideration of the position of the small and medium-sized iron and steel producers as compared with the large companies. The Report of the majority of the Board states (p. 135):

"By recommending further study of the position of the smaller companies we do not mean that the application of the minimum wages found here to be prevailing should be held up pending the results of such study. The minimum wages in this industry, as we have seen, prevail re-
187 gardless of the wage data of the smaller companies. Futhermore, the study suggested would be concerned primarily with the effect of the wage determination on the competitive position of the smaller companies in bidding for Government contracts."

In analyzing that recommendation of the Board consideration must be given first to the practical effects of a prior wage determination as recommended by the Board and a subsequent study of the position of the smaller companies. The majority of the Board finds (Report, p. 135):

"The overwhelming position of the large companies in the industry sets the pace for the industry and this is as true with respect to the minimum wages prevailing as it is of the other phases of operation in the industry."

If a determination of the rates as recommended by the majority of the Board shall be promulgated, practically all plants in the Eastern section of the country must revise all production wage rates upward. It may be argued that companies that have no interest in bidding for Government work will not be compelled by such determination to revise their wage rates. The Board, however, has

found to the contrary. The large companies set the pace for the industry. The small companies with plants located in the vicinity of plants of large companies whose rates are affected must revise their own rates comparably upward in order to maintain an adequate labor supply.
188 The mere publication of such a determination will make for labor unrest and demands for pay increases.

As we shall show hereinafter we believe that a determination in accordance with the recommendation of the majority of the Board will result in a general disturbance of wage rates throughout the Industry and also in other industries in the localities in which the plants of the Industry are situated. In any case such a determination will force an immediate upward revision of the wage rates of all small Eastern producers who bid on Government work. Applications for exemption from the proposed wage determination cannot be passed upon with any degree of celerity. In fact the Board's suggestion that the smaller companies may apply for exemptions under Section 6 of the Act is not only illogical but absolutely impractical. The pertinent provisions of Section 6 of the Act read:

"Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting rates of pay and maximum hours of labor as he may find necessary and proper in
189 the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described."

The regulations, Article 601, of the Department of Labor set up the procedure for obtaining exemptions as follows:

"Request for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by article 1 must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business.

"Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of the contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired."

It appears that the Board does not have in mind the exemption of a class of contracts, because it finds
190 that both large and small companies bid for Government work (Report, pp. 120-121). Under the above quoted regulations a request for an exception or exemption before the contract is let must come from the head of the contracting agency or department and not from the contractor. It seems clear that any such request could be granted only with respect to all companies who might bid for a particular contract or contracts and that it could not be granted in favor of some one or more bidders and not in favor of all bidders. A request under the second paragraph above quoted could only be made after the bids had been opened and the contract had been awarded, when it would be too late for the contractor to withdraw. Few, if any, bidders would wish to take such a chance. Of what value, therefore, to the small companies is a subsequent finding that they be given special consideration? It is locking the stable door after the horse is stolen.

In truth, what is this investigation which the Board suggests with respect to the smaller companies? Is it to discover whether they are important to the Government? It cannot be that, for the Board's Report (p. 118) lists several that have taken Government work and its chart of

bidders (pp. 120-121) lists several more that have entered competition for such work.

Is it the purpose of the Board that competition for Government work be limited only to the large companies?

The Report indicates that the Board believes that
191 there is enough equity and justice in the position of the smaller companies to warrant possible recommendations that they be granted exemptions from any minimum wage determination under the Public Contracts Act.

But under the existing precedents applicable to procedure under the Public Contracts Act there can be no general exemptions of smaller companies. In a memorandum of the Acting Solicitor of Labor to the Administrator of the Public Contracts Act, dated August 10, 1938, after stating his opinion that the Secretary of Labor may not create a minimum wage differential based upon the size of companies within an industry, the Acting Solicitor says with regard to the suggestion that exemptions may be granted to the small companies under Section 6 of the Act:

"It should be noted that Congress expressly stipulated that variations, tolerances or exemptions under the Public Contracts Act must be 'reasonable' (Section 6 of the Act). This requirement would subject any determination of the Secretary to judicial review and the court's interpretation of what is reasonable. To my knowledge, there have been no court decisions upon minimum wage determinations involving differentials based on the size of companies. Nor has there been such a differential under any of the federal wage rate orders, any of the state minimum wage decisions or any of the N. R. A. code rates. In view of these circumstances, as well as the instructions of Congress
192 concerning the wages paid in a locality, I do not believe that such a differential would be held reasonable."

Even if the Act permitted such exemptions in favor of the smaller companies, the granting of such exemptions would be of little or no practical benefit to those smaller companies whose plants are located in or near localities in which the plants of larger companies that would be required to pay the higher rate established by the determina-

tion of the Secretary of Labor are located, because such smaller companies would be unable to maintain an adequate labor supply at wage rates considerably lower than those paid at the plants of such larger companies.

The record of the public hearing, the briefs filed prior to August 22, 1938, and, moreover, the Report of the Board setting forth its Findings, Conclusions and Recommendations are replete with statements of fact which show that such a determination as that recommended will be disastrous to many small producers, particularly those with plants in the East, whose services the Government has accepted in the past and needs now for the furtherance of its plans for national defense. As we have shown above, the Board's proposal of a determination to be followed by a further investigation of the position of the smaller companies will afford no practical relief. Apparently the Board has in mind an investigation of each small
193 producer in detail to determine whether what will amount, in effect, to a "locality" exemption would afford the remedy.

A reopening of the hearings would accomplish that purpose. The Board would then have an opportunity to examine the competitive situation of each of the small nonintegrated companies, the effect of its wage rate upon its ability to get business, whether such a change as recommended would be ruinous to it, and, most important of all, whether a strictly defined "locality" determination is not the answer to the problem. If the Board is to make a thorough study of the position of the small producer, it must investigate not only his wage rates but his economic position in the Industry and the effect upon such position of any recommendations that the Board shall make. As a matter of fact, an investigation along such lines should develop that many of the smaller companies are specialists making small materials in smaller lots, which of necessity require more labor. To do much of their work in the manner of the large producer would be like plowing a backyard with a tractor plow.

The Board having found that the effect upon the smaller companies warrants further consideration, it would seem to be not only reasonable, but imperative, to conclude such

an investigation and make the necessary findings before any report is made to the Secretary of Labor.

194 II.

The recommended further study of the effect of the lower rate in the South on the competition in the Industry must be made before any determination is promulgated.

Both the Record and the Board's Report show that, while there is a distinct wage differential between the North and the South, those producing localities in the North which naturally meet Southern competition have wage rates graded downward from the highest to strike an equitable balance with the competing area. The producing centers with the highest rates are those in the Pittsburgh, Chicago and Ohio districts. The rate pattern scales off in those districts which must ship southward, such as the St. Louis, Southern Illinois, Kentucky and Eastern areas. It is practically a matter worthy of judicial notice that iron and steel products are heavy and that a delivered cost must include a large proportion of freight charges.

As the Record shows, the cost of assembling raw materials in the South is generally lower than that in the St. Louis, Southern Illinois, Kentucky and Eastern areas because of the closer proximity of the Southern plants to their sources of supply of raw materials.

The largest producer in the South is already at a 45¢ per hour base rate for common labor. On the other hand a determination along the lines of the Board's rec-
195 ommendation would mean that the Eastern producer would be forced to increase all wage rates by at least 10%. The increase in manufacturing costs that would result from such an increase in wage rates would substantially restrict the territory in which he could successfully compete with the producers in the South. Furthermore such an increase in wage rates in the East would further impair the ability of the Eastern producers of iron and steel products to meet foreign competition.

The recommendation of the majority of the Board would, therefore, impair the ability of the small Eastern producer to compete with other steel producers not only in the North but in the South as well.

The Board recognizes, by its suggestion for further study of the effect of the recommended determination for the South, that some producers may be adversely affected thereby, and that it may seriously disturb normal competitive conditions in the Industry. In making that suggestion the Board indicates that it feels that its recommendation may not in fairness to small producers be generally applied. Our contention is that the recommendations of the majority of the Board are entirely incorrect; but, however that may be, by making such suggestion the Board admits that its work is unfinished. That being the case, then we most earnestly urge that now is the time to make the further investigation, not after the adoption of recommendations that will, as we believe, result in eliminating the small producer from competition, not only for Government work, but for business generally.

196

A study of the wage determinations for other industries promulgated by the Secretary of Labor shows a number at 35c per hour, several at 40c per hour and only two at over 50c per hour for any Northern localities and in these two it is apparent that the determinations cover either skilled or semi-skilled labor. The Board's Report (p. 75) shows that less than 5% of the productive workers in the entire Steel Industry received wages based upon less than 50c per hour for common labor and more than 86% of such 5% are in the South. (Report, p. 78 et seq.) Considerably less than 1% of all of the productive workers in the Industry outside of the South received wages based upon less than 50c per hour for common labor. (Report, p. 78 et seq.) Obviously this is not a sweat shop industry and no real hardship on labor or need for any immediate changes has been shown.

The study of the effect of the proposed Southern rate cannot be confined to a possible change in that rate. The Board can find only the facts as they exist. As the minority Report states (p. 143), the Public Contracts Act is not a wage-raising Act as such. It must be true that at least one of the purposes of the contemplated study is to discover whether the increases recommended for other localities would materially disturb competitive conditions in the Industry not only as regards competition for Government contracts but also for all other busi-

197

ness. It must include a study of freight charges and of the areas in which the South competes with the other producing areas, particularly the East, as well as the extent of specialization and integration in the various plants of the Industry.

But he who runs may read that an increase of at least 10% in the wage rates in the East and none to the outstanding producer in the South must affect the competitive position of the Eastern producers, particularly the small Eastern producers whose markets are in the East. The Board admits the need for further testimony and study of the facts in that regard. Simple equity and justice require that such studies be completed before any determination shall be made that will cause injury to the small Eastern producer whose wage rates conform to those generally prevailing in the locality of his plant.

III.

The Board has failed to obtain adequate evidence with regard to and to consider the effect of the proposed determination upon the wage rates in other industries.

It is apparent from the Record that the proposed determination recommended by the majority of the Board will effect an increase in the prevailing minimum wages in the Steel Industry in a great number of localities in
198 which the plants of the Industry are located. The Board has found that wage rates in the Industry generally are dependent on the base rate for common labor and that any increase in the latter rate must result in increases in the other wage rates in the Industry (Report, pp. 8, 9, 10). The Board has adopted as the definition of a common laborer (Report, p. 8) "one who performs physical or manual labor of a general character and simple nature, requiring no special training, judgment nor skill". Such type of labor is of course employed in most other industries. The Record shows that common labor is employed by manufacturing plants, railroads, public utilities, municipalities, state departments and by the United States Government itself. It is apparent that any increase in the common labor rate in the Steel Industry in any locality must affect other industries in which common labor is employed in such locality.

Any determination by the Secretary of Labor which should seriously disturb prevailing wage levels in industry generally, as we believe the proposed determination would do, would be clearly contrary to the purpose of the Act. It is submitted, therefore, that before the Secretary of Labor can properly make any determination with regard to prevailing minimum wages in the Steel Industry which will result in such widespread increases in the rates of pay for common labor now being paid in the Industry, the Board should obtain adequate evidence as to the effect of any such determination upon such other industries
199 and as to the wage rates prevailing in such other industries in the localities in which the plants of the Steel Industry are situated and the effect thereof upon wage rates in the Steel Industry.

The Public Contracts Act, in effect, requires that in determining prevailing minimum wages in any industry the Secretary of Labor shall have due regard for wages of persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the work is to be performed. An effort was made to include evidence on that subject before the Record was closed. The Record is not complete, however, because the Board made no attempt to elicit such information from other sources than the few who submitted it voluntarily. Neither did any governmental agency submit information on the subject.

A complete and reasonable recommendation can only be made after a thorough investigation of the common labor rates in all industries in the immediate vicinity of the iron and steel plants, and, moreover, it cannot be complete unless information is elicited direct from those industries to discover the effect upon them, the communities and upon industry at large.

It is submitted that the Board will not have made a sufficient investigation to enable it to make proper recommendations with respect to one of the large basic industries of the country, until such data are sought and placed upon the Record. The Board, being a fact finding agency,
200 will not have performed the duty conferred upon it unless, and until, it shall have investigated and considered such matters.

Wherefore, your petitioners respectfully request that this matter be resubmitted to the Public Contracts Board for the purpose of a further investigation and hearing with regard to the subjects hereinbefore referred to, and that the time within which interested parties may file exceptions and objections to the Findings of Fact, Conclusions and Recommendations contained in the Report of the Board and briefs in support thereof be extended for a period of fifteen days after a determination on this petition shall be made and notified to your petitioners.

Dated, December 3, 1938.

Respectfully submitted,

D. S. WOLCOTT,
J. H. PARKER, and
JOHN T. WHITING,
as a Committee representing small Eastern producers of Iron and Steel Products.

ROBERTS B. THOMAS, *Counsel,*
101 Park Avenue,
New York, N. Y.

201

Exhibit D

Before The Secretary of Labor

In the Matter of THE DETERMINATION OF THE PREVAILING MINIMUM WAGES IN THE IRON AND STEEL INDUSTRY.

Exceptions of Small Eastern Producers of Iron and Steel Products to the Findings of Fact, Conclusions and Recommendations of the Public Contracts Board.

ROBERTS B. THOMAS,
Attorney for Committee representing small Eastern producers of Iron and Steel Products,
101 Park Avenue,
New York, N. Y.

202 Before The Secretary of Labor

In the Matter of The Determination of the Prevailing Minimum Wages in the Iron and Steel Industry.

Exceptions of Small Eastern Producers of Iron and Steel Products to the Findings of Fact, Conclusions and Recommendations of the Public Contracts Board.

D. S. Wolcott, J. H. Parker and John T. Whiting, as a Committee (hereinafter called the Committee) representing small Eastern producers of iron and steel products, on behalf of themselves, acting as such Committee, and on behalf of each of the companies represented by the Committee, except to the Findings of Fact, Conclusions and Recommendations (hereinafter called the Majority Report) of the Public Contracts Board (hereinafter called the Board) and to the proposed findings, conclusions and recommendations set forth in the Opinion of Minority attached to said Majority Report (hereinafter called the Minority Report), reserving, however, all rights and benefits in law and in equity and to any motions, objections and exceptions heretofore made or taken and appearing in the record herein or in any petitions, statements, briefs or other documents heretofore filed on behalf of the Committee, the group represented by the Committee, or by any of the companies represented by the Committee, as follows:

1. To the Majority Report and to the Minority Report in their entirety and to each of the conclusions and
203 recommendations and proposed conclusions and recommendations therein set forth on the ground that the findings of fact, conclusions and recommendations as well as the proposed findings of fact, conclusions and recommendations do not make proper application of the evidence herein under the provisions of the Public Contracts Act (Public No. 846, 74th Congress, June 30, 1936, hereinafter called the Act) nor in accordance with other applicable provisions of law.

2. To the recommendation set forth on page 136 of the Majority Report that the Secretary of Labor determine the prevailing minimum wages in the industry to be as follows:

"(1) 45 cents an hour within the area made up of the States of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, and Virginia.

(2) 62.5 cents an hour within the area made up of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Maryland, Delaware, West Virginia, Kentucky, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, Washington, and the District of Columbia."

on the ground that said recommendation is contrary to and against the weight of evidence and is contrary to the provisions of law applicable to such a determination, and on the further ground that there is no evidence to sup-
204 port any determination for any localities in the states of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Texas, Tennessee, Georgia, Maine, New Hampshire, Vermont, Rhode Island, Wisconsin, Iowa, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado, Wyoming, Montana, Idaho, Arizona, Nevada, Oregon and the District of Columbia.

3. To the recommendation set forth as follows on page 136 of the Majority Report:

"(2) that subsequent to a determination that the prevailing minimum wages in the Iron and Steel Industry are 45 cents in the South and 62.5 cents in the remainder of the industry, a study, and if necessary, further Findings of Fact be made with respect to the effect of the lower minimum wage on the competition in the industry for Government business;"

on the ground that such a recommendation can only be based upon a finding that the evidence in respect thereto is insufficient and is, therefore, contrary to the applicable provisions of law.

4. To the recommendation set forth as follows on page 136 of the Majority Report:

"(3) that subsequent to a wage determination for the Iron and Steel Industry, a study be made of the position of the smaller companies in the competition for Government business in order that the Board may be placed in a position to advise the Secretary of Labor with respect to requests for exemptions under section 6 of the Act, should the occasion arise;" on the ground that such recommendation for a further study subsequent to a determination, being based upon a finding that the evidence in respect thereto is insufficient, is contrary to all the equities and to any of the provisions of law applicable thereto.

5. To the finding of the definition of the products of the iron and steel industry as set forth on pages 5 and 6 of the Majority Report on the ground that it is contrary to and against the weight of evidence, and on the further ground that there is no evidence to support a finding that each and every of the products of the iron and steel industry as therein set forth are, or have been, the subject of Government purchases.

6. To the findings set forth on pages 12 to 23, both inclusive, of the Majority Report of rates in various plants under the heading "Base rate in plant having union agreement as reported by S. W. O. C." on the ground that there is insufficient evidence to support the same, and on the further ground that there is no evidence to the effect that the base rates as therein set forth have been arrived at under, or are set forth in, such agreements.

7. To the finding set forth as follows on page 91 of the Majority Report:

"None of the plants paying the 56.5 base rate is in any sense geographically isolated from other iron and steel plants. Distances in the Eastern area between these plants are relatively small. Syracuse is the farthest removed from important producing centers of any of the Eastern localities in which the 56.5 rate is paid. Newark, Ohio is somewhat removed from other Ohio-producing areas, but neither Syracuse nor Newark occupy separate geographical positions in the industry. The Laclede plants are located in the immediate vicinity of St. Louis, Missouri which is a small iron and steel-producing center." on the ground that such finding is contrary to and against the weight of evidence.

8. To the finding set forth on page 101 of the Majority Report as follows:

"The predominant minimum wage practice in this industry comes to light only when we view the practice of the industry as a whole or over broad regional areas."

on the ground that such finding is not supported by the evidence and is incompetent, irrelevant and immaterial under the provisions of law applicable in this proceeding.

9. To the finding on page 102 of the Majority Report to the effect that the Southern region is not divided into distinct areas of competition on the ground that there is not sufficient evidence in the Record to support such a finding, and that such finding is irrelevant and immaterial.

10. To the finding on page 102 of the Majority Report to the effect that the relative size and the large working force of the Tennessee Coal, Iron and Railroad Company put it in a position to be the determining factor in establishing the prevailing minimum wage for persons employed in the South, on the ground that such finding is contrary to and against the weight of evidence.

11. To the finding set forth on page 104 of the Majority Report as follows:

"Geographically the lower paying plants are, for
207 the most part, tied into the economy of producing areas in which higher rates are paid."

on the ground that there is insufficient evidence to support such finding and on the further ground that such a finding is irrelevant and immaterial.

12. To the finding on page 105 of the Majority Report that neither Erie, Pa., or Troy, N. Y. can be said to be distinct economic regions on the ground that there is no evidence in the Record to support such finding and on the further ground that such finding is irrelevant and immaterial.

13. To the findings on page 115 of the Majority Report to the effect that none of the producing centers in the vicinity of Erie, Harrisburg, Johnstown, Bethlehem and Philadelphia, Pa., Syracuse and Troy, N. Y., Baltimore and Sparrows Point, Md., and New England can be called geographic regions on the ground that such findings are contrary to and against the weight of evidence.

14. To the finding on page 119 of the Majority Report that geographic location does not limit the efforts of iron

and steel manufacturers to secure Government business, on the ground that there is not proper or sufficient evidence in the Record to support such finding.

15. To the finding set forth as follows on page 122 of the Majority Report:

"The evidence presented above gives us a picture of an economically unified industry. The geographical regions are not self-contained marketing areas, nor are the various producing centers. Between the Northern and Southern geographic regions the levels of base rates were
208 found to be so wide apart that a separate prevailing minimum wage was derived from a comparison of the base rates paid in the Southern plants. But there is nothing to parallel this situation in the industry as we look at it from East to West. The producing areas are small and especially in the Middle West and East there is a high degree of inter-competition. The West may be regarded as a geographic area but, as we have seen, there is no basic difference between the base rate level in the West and in the East. In the East a number of producing centers vary somewhat in the base rate which may be said to be predominant in these centers but, on the whole, the variations among them are not large. In only two instances in the East are the base rates in the producing centers on a substantially lower plane than in other producing centers in the same area. But in no case in the East, that is to say, the area from Chicago and St. Louis to and including New England do we find any variations on a regional basis. What we have for the most part is a goodly number of small geographic areas, among which there are variations in the base rates to a limited extent and among which there are no lines of economic demarcation. This, in brief, is the situation with respect to the geographic location of plants. We do not believe that the geographic location of the plants offers a sound basis for separate findings of prevailing minimum wages, except the geographic division that has been made between the North and the South."

on the ground that such finding is not supported by the evidence.

16. To the finding on page 122 of the Majority Report to the effect that Buffalo, N. Y. is not a separate economic area for wage purposes on the ground that such find-

209 ing is not supported by the evidence and on the further ground that such finding is irrelevant and immaterial.

17. To the conclusion set forth as follows on page 123 of the Majority Report:

"The recognition of the particular base rate levels in the considerable number of producing centers where they are a variable factor might be a satisfactory approach to the problem of minimum wages in the industry if the purpose of these proceedings was to perpetuate the local wage variations, as under the Code. But the purpose of these proceedings is to find the prevailing minimum wage which will serve the Government as an effective wage standard in its contract for iron and steel. It is necessary that the minimum wage standard for this purpose be as broad in its scope as possible. Both the requirements of the Government for a wage standard and the economic characteristics of the industry's markets require that a broad view of the entire wage structure of the industry in the North and West be taken, rather than a particular view of numerous local wage levels."

on the ground that such conclusion is contrary to the provisions of law applicable in this proceeding.

18. To the conclusion on page 124 of the Majority Report to the effect that it is necessary herein to consider the base rate structure of the industry as a whole on the ground that such conclusion is contrary to the provisions of law applicable in this proceeding.

19. To the proposed finding set forth on page 139 of the Minority Report to the effect that the producing centers at Johnstown, Pa. and Buffalo, N. Y. be included as a

210 wage locality with the Pittsburgh, Ohio, West Virginia, Indiana and Illinois producing areas, on the ground that such a finding is contrary to and against the weight of evidence.

20. To the proposed conclusion set forth as follows on page 141 of the Minority Report:

"* * * If a 6-cent differential is of sufficient magnitude to justify its recognition by a separate wage determination for the area in which it is found, as I think it is, what factors could be present to overcome the differential? Evidently they are (1) the competitive advantage presumably

inherent in the lower rate and (2) the danger to the higher wage structure lurking in this competitive advantage."
on the ground that such conclusion is contrary to the provisions and the intent of the provisions of law applicable in this proceeding.

The Committee on behalf of itself and of the companies represented by it also except to the aforesaid Findings of Fact, Conclusions and Recommendations of the Majority of the Board and of the proposed findings, conclusions and recommendations of the Minority in that the Board has failed:

21. To take evidence with respect to the specific products produced in each plant and in each producing center and to find the prevailing minimum wages for each and every of the iron and steel products which are the subject of this proceeding, and for each of the producing centers for each and every of such products.

22. To find the minimum prevailing wages for each producing center or locality as required by law.

23. To recommend that the Secretary of Labor de-
211 termine the prevailing minimum wages in the iron and steel industry in the localities hereinafter set forth under the heading "Producing Center" at the wage rates hereinafter set forth under the heading "cents per hour":

Producing center	cents per hour
Allentown, Pa.	56.5
Apollo, Pa.	53
Berwick, Pa.	48
Bethlehem, Pa.	56.5
Birdsboro, Pa.	54
Burnham, Pa.	49
Chester, Pa.	56.5
Coatesville, Pa.	56.5
Conshohocken, Pa.	56.5
Danville, Pa.	56.5
Erie, Pa.	53
Franklin, Pa.	50
Harrisburg, Pa.	54
Johnstown, Pa.	58.5

Producing center	cents per hour
Lebanon, Pa.	46.5
Milton, Pa.	46.5
Phoenixville, Pa.	56.5
Philadelphia, Pa.	50
Pine Forge, Pa.	43
Reading, Pa.	57
Sheridan, Pa.	48.5
Steelton, Pa.	56.5
Williamsport, Pa.	48.5
Holyoke, Mass.	55
Wareham, Mass.	49.5
Worcester, Mass.	55
Branford, Conn.	52.5
Bridgeport, Conn.	55
Wallingford, Conn.	50
Buffalo, N. Y.	59.5
Cohoes, N. Y.	42
Lockport, N. Y.	55
Lyon Mountain, N. Y.	30
Syracuse, N. Y.	56.5
Troy, N. Y.	46
Dover, N. J.	50
Harrison, N. J.	56.5
Jersey City, N. J.	56.5
Kenilworth, N. J.	57
Newark, N. J.	45
Baltimore, Md.	53
Claymont, Del.	57
Bristol, Va.	38
Lynchburg, Va.	42
Portsmouth, Va.	35
Reusens, Va.	43
Richmond, Va.	35
Roanoke, Va.	35

212

24. To take testimony and make findings in accord with such testimony with respect to the rates paid unskilled, common labor in other industries in the various localities

in which the products of the iron and steel industry are produced.

Dated, December 17, 1938.

Respectfully submitted,

ROBERTS B. THOMAS,

Attorney for Committee representing small Eastern producers of Iron and Steel Products,

101 Park Avenue,
New York, N. Y.

213 *Exhibit E.*

U. S. DEPARTMENT OF LABOR (597)

Washington

TITLE 41—PUBLIC CONTRACTS

Division of Public Contracts

In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry

This matter is before me pursuant to Section 1(b) of the Act of June 30, 1936 (49 Stat. 2036; 41 U. S. C. Sup. III 35) entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", (hereinafter called the Act). The Public Contracts Board, created in accordance with Section 4 of the said Act by Administrative Order dated October 6, 1936, held a hearing on July 25, 1938 in the above-entitled matter.

Notice of this hearing was sent to all known members of the industry, to trade unions, to trade publications, and to trade associations in the field. Invitation to attend the hearing was extended through the national press to all other interested parties.

Appearances were made at the hearing by 39 members of the industry, of whom 20 offered testimony either in person or by representatives. Appearances were also made by the Amalgamated Association of Iron, Steel & Tin Workers of America, American Federation of Labor, Bricklayers

International Union, Committee for Industrial Organization, Machinery and Allied Products Institute, Steel Founders Society of America, Steel Plate Fabricators Association, and Steel Workers Organizing Committee. Testimony was given by American Federation of Labor and Steel Workers Organizing Committee.

Prior to, during and immediately after the hearing, letters, telegrams, and briefs containing wage data and other relevant information were received from 51 concerns who were not represented at the hearing. After the hearing a notice dated July 29, 1938 was sent to all known mem-
214 bers of the industry from whom no reports were received in response to the notice of hearing informing these parties that the record would be held open until August 8, 1938 for the submission of wage data and other information with respect to the prevailing minimum wages in the Iron and Steel Industry. Responses in the form of letters, telegrams and briefs were received from 61 of these parties. At the request of interested parties the time for filing briefs was extended until August 22, 1938.

The Board's report recommended that the industry be defined as in Article I, sections 3 and 4 of the Amendment to Code of Fair Competition for the Iron and Steel Industry, with the exception that it recommended the exclusion of tin plate, tin mill black plate, and terneplate for the reason that the government makes no purchases thereof and there is evidence of a wage scale existing in the production of these products different from that otherwise existing in the Iron and Steel Industry.

The Board further recommended that the Secretary of Labor find the minimum wage in the Iron and Steel Industry to be 45 cents an hour within the area made up of the States of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, and Virginia; and 62.5 cents an hour within the area made up of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Maryland, Delaware, West Virginia, Kentucky, Ohio, Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Colorado,

Wyoming, Montana, Idaho, Utah, Arizona, Nevada, California, Oregon, Washington, and the District of Columbia.

The Board further recommended that a study be made looking to the establishment of a minimum wage for the manufacture of tin plate, tin mill black plate, and ter-
215 neplate, and that after the determination of a minimum wage in the industry, further study be made to determine the effect of the determination on small companies. The Board likewise recommended that an allowance be made in the determination of this case for the employment of apprentices at wages less than the prevailing minimum wages, provided that the employer has on file an active indenture entered into in accordance with the standards of the Federal Committee on Apprenticeship.

The Administrator of Public Contracts circularized the Board's recommendations to all parties who had shown an interest in the matter in order that they might register their objections to or approval of them before any decision was made by the Secretary.

Numerous requests were received from members of the industry for an opportunity to present oral argument for or against the adoption of the Board's recommendations in whole or in part. Such objections as were made to the Board's report were not to the finding as to the wages actually being paid in the industry, but to the recommendation based on these wage facts that the prevailing minimum wage be found to be 45 cents in the South and 62.5 cents in the North. For these reasons, on December 20, 1938, opportunity was afforded to all interested parties to present oral arguments before me as Assistant Secretary of Labor acting for and in the stead of the Secretary. Forty-eight companies and two representatives of labor unions availed themselves of this opportunity to show cause.

As in the case of letters and briefs, the oral arguments did not challenge the Board's findings of wage facts, but made objection to the conclusions based thereon as to the prevailing minimum wages in the industry.

No objection has been made to the definition of the industry recommended by the Board, with the exception that the Machinery and Allied Products Institute requested that the definition be so worded as to exclude from its purview

the open hearth and electric furnaces used in that
216 industry. The definition as formulated describes the products of the Iron and Steel Industry and the provisions thereof do not apply to open hearth and electric furnaces which are utilized in any production other than that specifically enumerated. All of the objections which have been taken to the recommendations of the Board turn upon the construction to be placed upon the language of Section 1(b) of the Public Contracts Act.

It has been urged that the recommendations of the Board are contrary to the provisions of the Public Contracts Act because they do not take cognizance of existing wage differentials between the various municipalities in which the plants of the industry are located. It is also urged that the Board's recommendations fail to give proper recognition to the existing economic structure of the industry and have failed to recognize the existence of broad geographic differentials. It has also been objected that differentials based on populations should be recognized in the selection of the appropriate locality within which prevailing minimum wages are to be determined; and that differentials based upon the size of the plants should be recognized.

It is recognized that the problem of selecting the geographical boundaries of each "locality" within which prevailing minimum wages are to be determined by the Secretary of Labor is a difficult one upon which wide differences of opinion may reasonably be held.

On behalf of one group of objectors it has been urged that the term "locality" as used in the Act is in effect synonymous with "city, town, village or other civil subdivision of the state". In support of this contention, it is urged that the Act is but an extension of the principles of the Davis-Bacon law (Act of Aug. 30, 1935, 49 Stat. 1011); that since the unit within which prevailing minimum wages are to be determined under the Davis-Bacon law, is the city, town,
village or other civil subdivision of the state in which
217 the work is to be performed, Congress must have intended the same unit to be used for the determinations to be made under the Act.

While this position has been forcefully presented it is believed that it will not stand careful analysis. In the first place, in accordance with well-known canons of statutory construction, it may be assumed that had Congress intended

to so limit the unit for prevailing minimum wage determinations under the Act, it would have adopted the identical language of the Davis-Bacon law.

The Davis-Bacon law provides:

"That the advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works . . . and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the *city, town, village, or other civil subdivision of the state* in which the work is to be performed, . . . and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications . . .:" (italics supplied).

The comparable language of the Act provides:

"That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States . . . for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:

"(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by

the Secretary of Labor to be the prevailing minimum
218 wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating *in the locality* in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;" (italics supplied).

It will be seen that the language of the Act closely corresponds to the language of the Davis-Bacon law in certain respects. But in selecting the appropriate unit for the making of prevailing minimum wage determinations, Congress carefully avoided the use of the more narrowly restrictive language of "city, town, village or other civil subdivision of the state in which the work is to be performed" and adopted instead the more flexible word "locality". This significant departure from the language of the Davis-Bacon law in this particular respect indicates a Congressional intent to relax the rigid requirement of the Davis-Bacon law and to permit the Secretary to exercise a sound discretion in the selection of appropriate units for prevailing minimum wage determinations. Indeed, had Congress used in the Act the restrictive language which was entirely appropriate for the different type of problem dealt with by the Davis-Bacon law, it would in a large measure have defeated the very objectives which it sought to achieve.

The restricted unit of the "city, town, village or other civil subdivision of the state in which the work is to be performed" is appropriate in the case of construction contracts for government buildings or public works since the construction work must be performed at the site of construction. But such is not ordinarily the case with government supply contracts. Here the field is broad and suppliers widely separated geographically may and normally are in a position to and do compete for government supply contracts. The Iron and Steel Industry itself is a striking example. And, since in many instances, there will be found to be but one plant of a particular industry located
219 in any one city, town, village or other civil subdivision, the net effect of construing the word "locality" as used in the Act to mean "city, town, village or other civil subdivision" would be to predestine in most cases a finding

that the prevailing minimum wages are the minimum wages in fact being paid at each plant.

Furthermore, such an arbitrary and unwarranted construction of the language of the Act would produce administrative problems of an almost insuperable character. Under such a construction it would be necessary to make prevailing minimum wage findings for perhaps as many different municipalities as there are establishments of manufacturers or suppliers who might conceivably bid on each government supply contract. And this procedure would be required for every one of the many government supply contracts to be entered into. Effective administration of the Act would become almost impossible. In view of the fact that the Act sought to eliminate the competitive advantage enjoyed by bidders on government supply contracts as a result of subnormal wage practices, no argument is necessary to demonstrate that such a narrowly restrictive construction of the statutory language would operate to make the statute an empty gesture and the finding of prevailing minimum wages a wholly useless procedure.

It will also be observed that this narrowly restricted construction of the word "locality" as used in the Act is contrary to the administrative construction consistently adhered to by the Secretary of Labor in the administration of the Act. Reference to the determinations heretofore made in the administration of the Act will disclose a consistent approach to the problem of selection of ap-
220 propriate units for prevailing minimum wage determinations in the light of the facts of each particular industry. In no instance has the language been administratively construed to require differentials between each city, town, village, or other civil subdivision of a state. In several instances where the facts in respect of the particular industry indicated that regional influences were in fact present, regional groupings were made and prevailing minimum wages determined for each region. Although it has had opportunity to do so, Congress has not acted to alter this consistent administrative construction of the Act. Congress may be presumed to have acquiesced and agreed to this administrative construction by its failure to act to alter it.

If we adopt in the present case this customary approach it is important to examine the concept which industry has of itself. It is a matter of public knowledge that an industry so vastly ramified in its productive and marketing operations as iron and steel does not regard itself as subdivided in a multiplicity of small localities, but as concentrated around a few well defined centers. For example, Mr. Myron Taylor in his report to the Annual Meeting of stockholders of the United States Steel Corporation on April 4, 1938, emphasized this when he said, Page 11: "It was determined, after a great deal of study, that the Corporation could achieve its highest efficiency by grouping its main producing units in the Pittsburgh district, the Chicago district and the Birmingham district. The Corporation had no adequate access to the Pacific Coast and so in 1930 the
221 assets of the Columbia Steel Corporation were acquired for common stock, thus giving the Corporation a producing unit in every major market."

Other objections were based upon the failure of the Board to give consideration to differences in population and differences in the size of the various plants in selecting each locality. But these objections likewise appear to be without merit, since the Act makes no provision for the establishment of population differentials or differentials according to size of plant.

The word "locality" used in the statute carries obvious geographic connotations. But, as has been pointed out in some of the briefs, the term may indicate "2. The fact of being local in the sense of belonging to a particular spot"; or "4(b). A place or district of undefined extent considered as the site occupied by certain persons or things, or as the scene of certain activities". (A New English Dictionary on Historical Principles; Oxford, Clarendon Press, 1908; Vol. VI, (p. 380.)

222 The language of the statute does not itself suggest answers to the questions which it raises. Other factors than geography must be adduced to assist the determination. Undoubtedly the Board was correct in considering the economic facts of the industry itself to assist it to a conclusion. The only question is whether the Board gave proper weight to the geographic factor and to other relevant considerations. In the light of all the evidence, I am

disposed to the view that the recommendations of the Board should not be adopted in full because for the present purposes those recommendations do not give sufficient weight to some of the relevant factors, and consequently fail to recognize the existence of all localities indicated by the evidence in the record.

The Board has recommended a finding that the states of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia and Virginia constitute a locality within the meaning of the Act and that the prevailing minimum wage in such locality is 45 cents an hour. On the whole, this recommendation appears to be amply supported by the evidence in the record. This southern area historically constitutes a well-defined geographical area and the pattern of currently prevailing wages in this area, as shown by the evidence in the record, supports the conclusion that the entire group of southern states should be treated as one locality for the purposes of the present proceeding. However, it would appear that the State of West Virginia, except for the panhandle area, comprising the counties of Harrison, Hancock, Brooke, Ohio, Monongalia, and Marshall, should likewise be included within the locality of the other southern states. The State of West Virginia, except for the panhandle area, is closely allied with the South and there seems no reason for excluding it from the southern locality. The evidence indicates that the only production in the State of West Virginia outside the panhandle area is predominantly for the southern market where its competition lies and this area is understood to be outside the Pittsburgh market area. With the addition of that portion of the State of West Virginia, exclusive of the counties of Hancock, Brooke, Ohio, Harrison, Monongalia, and Marshall, the recommendations of the Board with respect to the southern locality and the recommendation of a finding that a prevailing minimum wage in that locality is 45 cents an hour will be adopted.

223

The recommendations of the Board that the remaining states of the country should be found to constitute one locality for the purposes of the present determination do not, in my opinion, properly recognize certain geographic and economic factors in the industry as fully as they should.

224 The coastal states of Washington, Oregon and California seem to constitute a fairly well-defined geographical locality. The evidence reveals that the principal producing centers are found in the State of California where there are shown to be nine plants. There is one small plant in Oregon and three plants in Washington, one of which is not in operation. The geographic position of these states more or less isolates them from competition by land from the East, and the plants in these states compete for and serve a more or less well-defined local market.

There is wage data of record for five plants in California and one in Washington. Plants not reporting have a small production capacity. The minimum wage in three plants, employing 3,130 employees, is 60 cents per hour. The minimum wage in one plant, employing 90 employees, is 65 cents per hour, and the minimum wage in two plants, employing 1,495 employees, is 58 cents per hour.

The more or less well-defined wage pattern disclosed by the data in the record supports the conclusion that geographically and economically these three states should be found to constitute a locality for the purposes of the present determination and that the prevailing minimum wage in the locality is 60 cents per hour.

Proceeding eastward geographic considerations suggest the inclusion of the mountain states of Montana, Idaho, Nevada, Wyoming, New Mexico, Utah, Colorado, and Arizona within a single locality. There are only two producing plants in this area, and the principal plant enjoys a certain economic isolation by virtue of the fact that no water transportation is available. This plant, located approximately 1,000 miles west of Chicago, is shown to sell approximately three-quarters of its output within a radius of 600 miles.

Both of the plants located within this locality pay a minimum of 60 cents per hour. Again a combination of economic and geographic considerations leads to the conclusion that the above-named states may properly be
225 regarded as a separate locality for the present purposes and that the prevailing minimum wage of the locality is 60 cents.

The remaining states east of the mountain states and west of the Mississippi River, consisting of the states of

North Dakota, South Dakota, Kansas, Nebraska, Minnesota, Iowa and Missouri have producing centers in Minnesota, Iowa and Missouri. There are two plants in Minnesota, one small plant in Iowa and a concentration of seven plants in Missouri. There are three additional plants in Alton, Madison, and Granite City, Illinois which are separated from St. Louis, Missouri by the Mississippi River and for all practical purposes are a part of the St. Louis producing center. It is characteristic of most of the producing points in this group of states that they are midway between the great producing centers in the North and the East and the great producing center of the South in Birmingham. Historically the plants in this area have operated on a wage differential below the rate paid in the northern and eastern centers, but higher than the rates paid in the South. The record contains wage data for six of the ten plants included in these states, including all of the principal producing centers. The minimum wages being paid in and about St. Louis, Missouri vary from 55 cents per hour to 58½ cents per hour. Two thousand eighty nine employees are employed in one plant paying a minimum of 58½ cents per hour, while 825 are employed in two plants paying a minimum of 56½ cents per hour and 2,160 employees are employed in two plants paying a minimum of 55 cents per hour. The record indicates that one plant in Minnesota employs 1,303 employees and pays a minimum wage of 60 cents per hour. The composite wage pattern for this area clearly discloses a differential under the northern and eastern plants and above the southern plants.

In view of all the factors involved, it is my opinion that the states under discussion, together with Alton, Madison, and Granite City, Illinois should be found to constitute a locality within the meaning of the Act, and upon the basis of the wage data just discussed, a finding of a prevailing minimum wage of 58½ cents per hour will be made.

226 The area immediately to the east of the trans-Mississippi locality is dominated by the producing centers in and about Chicago and Gary, Indiana. The states of Wisconsin, Illinois (except Alton, Madison and Granite City which are a part of the Saint Louis industrial area) Michigan, and Indiana seem to constitute a fairly well-de-

fined locality, both in terms of geography and in the light of the concentration of production.

The record contains wage data from 31 plants of the 82 in the locality. Twelve plants employing 47,545 employees pay a minimum of 62½ cents; 13 plants employing 5,647 employees pay a minimum of from 38 to 62½ cents; 3 plants employing 5,376 employees pay a minimum of from 63 to 70 cents. The prevailing minimum wage in this locality is obviously 62½ cents an hour.

The remaining states consisting of Pennsylvania, Delaware, Maryland, Kentucky, Ohio, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine, together with the panhandle area of West Virginia, consisting of the counties of Hancock, Brooke, Ohio, Harrison, Monongalia and Marshall, fall within the great market dominated by Pittsburgh. It has been urged both at the hearing before the Board and in the subsequent proceedings in this matter that the western portion of the state of Pennsylvania does not fall within the same locality as the eastern portion of the state and a finding of various different localities has been urged. Yet the entire eastern market, frequently referred to in the industry as the Pittsburgh district, would seem to constitute a single locality, both in terms of geography and in terms of the markets predominantly served by the producing plants.

227 Historically, the plants in the eastern states have sold their products largely on the so-called Pittsburgh basing point system. While counsel commented on the recent abandonment of the system, none of the evidence in the record would indicate that the comparatively recent change has as yet had any significant economic repercussions or has in any way altered the essential outlines of the Pittsburgh locality.

The record contains wage data with respect to 157 of the 268 plants in the area. The reporting plants employ 220,653 employees. Eighty-six of the plants, employing 154,707 employees, pay a minimum of 62½ cents an hour. The first point of substantial concentration of employees is at 56½ cents. At that rate there are 16 plants employing 36,743 employees. Thirty-eight plants employing 12,029 employees pay less than 56 cents. Between the rates

of 56½ and 62½ cents, there are 16 mills employing 16,673 employees. One plant employing 501 employees pays 63½ cents. Clearly the minimum is 62½ cents.

It has been urged at the hearing that in some instances the establishment of a 62½ cent wage will operate inequitably as to those plants which are now paying less, particularly with relation to those plants in the Pittsburgh locality which are paying 56½ cents, and it has also been urged that a further study of the industry be made before the wage determination be promulgated. The evidence as recited above, however, for each district, indicates clearly the prevalence of the prevailing minimum wage in that area and is sufficient basis upon which to promulgate a wage generally applicable throughout the industry.

It was argued by counsel that if the regional lines which the majority of the Board recommended were adopted or if lines were established other than by municipal sub-
228 division as contemplated in the Davis-Bacon law, hardship would be created upon some of the small companies in some regions. It was also suggested, although the point was not developed in the evidence, that while the small companies depend upon government business only to a minor degree certain kinds of steel specialties essential to the Government are chiefly furnished by small companies. If this is indeed the case an analysis will be made of the bidding in future contracts for specialties so that the machinery provided by Section 6 may be called into operation upon a proper showing that the public interest would thereby be served.

There was also a suggestion that the small companies perform the bulk of work on experimental contracts. Since experimental contracts are not within the scope of this decision, it would appear that the procurement of commodities obtained in this way will not be impaired.

It is noted that there exists in the industry a practice whereby the employees of the industry pay, through the instrumentality of the employer's disbursing office, certain obligations. It is suggested that the practice exists for the convenience of the employee in paying the obligations. Whether or not such practice contravenes the provisions of Section 1(b) of the Act is a matter of course that can be decided only upon full disclosure of all facts involved.

Where there exists at the plant of any bidder on Government contracts subject to the provisions of the Public Contracts Act a practice of so using its disbursing office for the convenience of its employees, and where this practice has been in existence at the plant for a long continued period of time, the bidder should submit a full statement of the facts to the Administrator of the Division of Public Contracts for a determination as to whether or not
229 they contravene provisions of Section 1(b) of the Act.

Upon all the evidence submitted in this matter, including the briefs filed and the oral arguments,

I Hereby Determine

(1) That the iron and steel industry is defined to mean and include the business of producing and selling all or any one or more of the following products:

Axels—rolled or forged
Bale ties—single loop
Bars—alloy steel, hot rolled
Bars—cold finished, carbon and alloy
Bars—concrete reinforcing, straight lengths
Bars, ingots, blooms and billets—iron
Bars—merchant steel
Bars—tool steel
Ferre—manganese and spiegeleisen
Girder rails and splice bars therefor
Ingots, blooms, billets and slabs—alloy
Ingots, blooms, billets and slabs—carbon
Light rails—60 pounds or less per yard—and splice bars and angle bars therefor
Standard tee rails of more than 60 pounds per yard—and angle bars and rail joints therefor, or any of such products
Mechanical tubing
Pig iron—foundry, high silicon silvery, malleable, open hearth basic, Bessemer and high silicon Bessemer
Pig iron—low phosphorus
Pipe—standard, line pipe and oil country tubular products
Plates
Posts—fence and sign

Railroad-tie plates
Railroad track spikes
Sheet bars
Sheets
Skelp
Steel sheet piling
Strip steel—cold rolled
Strip steel—hot rolled
Structural shapes
Tubes—boiler
Tube rounds
Wheels—car, rolled steel
Wire—drawn
Wire hoops—twisted or welded
Wire nails and staples, twisted barbless wire, barbed wire, twisted wire fence stays and wire fencing (except chain-link fencing)
Wire rods
Wire—spring
Wire—telephone

230 (2) That the prevailing minimum wages for persons employed in the manufacture or furnishing of he products of the Iron and Steel Industry are the amounts ndicated for each of the following localities whether arived at on a time or piece work basis:

1. 45 cents per hour in the locality consisting of the states f Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, Virginia and West Virginia (except the counties f Hancock, Brooke, Ohio, Harrison, Monongalia, and Marhall);

2. 60 cents per hour in the locality consisting of the states f Washington, Oregon and California;

3. 60 cents per hour in the locality consisting of the states f Montana, Idaho, Nevada, Wyoming, New Mexico, Utah, Colorado and Arizona;

4. 58½ cents per hour in the locality consisting of the tates of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri and the area in and about East Saint Louis, Illinois;

5. 62½ cents per hour in the locality consisting of the States of Wisconsin, Illinois, (except the area in and about East Saint Louis, Illinois), Michigan, and Indiana;

6. 62½ cents per hour in the locality consisting of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, and that portion
231 of the State of West Virginia comprised within the counties of Hancock, Brooke, Ohio, Marshall, Harrison, and Monongalia, and the District of Columbia;

Provided that apprentices may be employed at lower rates if their employment conforms to the standards of the Federal Committee on Apprenticeship.

This determination shall be effective and the minimum wages hereby established for the respective localities shall apply to all contracts awarded subject to Public Act No. 846, 74th Congress, on or after January 31, 1939.

Dates this 16th day of January, 1939.

(signed) CHARLES V. McLAUGHLIN
Acting Secretary

232 *Exhibit F* (623)

U. S. DEPARTMENT OF LABOR

Washington

TITLE 41—PUBLIC CONTRACTS

Division of Public Contracts

In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry

Postponement of Effective Date of Secretary of Labor's Decision in the Iron and Steel Industry.

The effective date of my decision in the above-entitled matter is hereby postponed until March 1, 1939 in order that industry may make necessary adjustments to comply with the decision.

Dated: January 30, 1939

C. V. McLAUGHLIN
Acting Secretary of Labor

Base Rates for Common Labor†

EASTERN DISTRICT

Base Rates	Location of Plant	Employer	Number of Wage Earners	Number of Common Laborers
30	Lyon Mtn., N. Y.	Chateaugay Ir. & St. Co.	103	18
42	Cohoes, N. Y.	Cohoes Rolling Mill Co.	163	9
43	Pine Forge, Pa.	Pine Iron Works Co.	52	19
46	Troy, N. Y.	Burden Iron Co.	300	69
46½	Lebanon, Pa.	Wrought Iron Co.	663	154
46½	Milton, Pa.	Milton Manufacturing Co.	345	6
48	Berwick, Pa.	American Car & Fdry. Co.	135	24
48½	Syracuse, N. Y.	Eckels, Nye Steel Co.	80	16
48½	Sheridan, Pa.	E. J. Lavino & Co.	180	95
48½	Williamsport, Pa.	Sweets Steel Co.	263	99
49	Burnham, Pa.	Logan Iron & Steel Co.	165	38
49½	Wareham, Mass.	Tremont Nail Co.	63	13
50	Parkersburg, W. Va.	Parkersburg Iron & St. Co.	588	99
50	Philadelphia, Pa.	Henry Disston & Sons Co.*	310	30
50	Troy, N. Y.	Troy Furnace Corp.	196	37
50	Dover, N. J.	Ulster Iron Works	250	35
50	Wallingford, Conn.	Wallingford Steel Co.	—	—
50	Worcester, Mass.	Worcester Pressed St. Co.	100	17
52	Huntington, W. Va.	West Virginia Rail Co.	274	53
52	Troy, N. Y.	Poor & Co.	132	24
52½	Branford, Conn.	Atlantic Wire Co.	130	13
53	Baltimore, Md.	Eastern Rolling Mill Co.*	446	78
54	Birdsboro, Pa.	E. & G. Brooke Iron Co.	215	47
54	Harrisburg, Pa.	Central Iron & Steel Co.	1,210	138
54	Harrisburg, Pa.	Harrisburg Steel Corporation	779	85
54	Baltimore, Md.	Rustless Iron & Steel Co.	247	80
55	Bridgeport, Conn.	American Tube & Stamp Co.	639	50
55	Worcester, Mass.	Johnson Steel & Wire Co.	273	50
57	Holyoke, Mass.	G. W. Prentiss & Co.	150	15
58	Philadelphia, Pa.	Carnegie-Illinois Steel Corp.*	93	20
58	Morgantown, W. Va.	Carnegie-Illinois Steel Co.*	13	12
58½	Pittsburgh, Pa.	American Steel & Wire Co.*	918	93
58½	Bethlehem, Pa.	Bethlehem Steel Co.	8,342	891
58½	Lebanon, Pa.	Bethlehem Steel Co.	664	129
58½	Steelton, Pa.	Bethlehem Steel Co.	3,198	384
56½	Danville, Pa.	Bethlehem Steel Co.	243	52
56½	Williamsport, Pa.	Bethlehem Steel Co.	434	130
56½	Coatesville, Pa.	Bethlehem Steel Co.	325	44
56½	Coatesville, Pa.	Lukens Steel Co.*	1,640	230
56½	Chester, Pa.	South Chester Tube Company**	614	113
56½	Conshohocken, Pa.	Alan Wood Steel Company*	1,379	255
56½	Phoenixville, Pa.	Phoenix Iron Co.	1,200	58
56½	Sparrows Pt., Md.	Bethlehem Steel Co.	15,846	1,477
56½	Harrison, N. J.	Crucible Steel Corp.*	1,580	300
56½	Jersey City, N. J.	Crucible Steel Corp.*	335	18
56½	Syracuse, N. Y.	Crucible Steel Corp.*	1,103	54
56½	Syracuse, N. Y.	Crucible Steel Corp.*	533	229
57	Kenilworth, N. J.	Carpenter Steel Co.	45	0
57	Reading, Pa.	Carpenter Steel Co.	834	56
57	Philadelphia, Pa.	Midvale Steel Co.	2,075	48
57	Claymont, Del.	Worth Steel Co.	876	66
57	Bridgeport, Conn.	Heppenstall Co.*	175	24
58	Worcester, Mass.	G. F. Wright St. & Wire Co.	171	18
59½	Philadelphia, Pa.	Ellwood Ivins St. Tube Wks.	24	5
62½	Trenton, N. J.	American Steel & Wire Co.*	323	9
62½	New Haven, Conn.	American Steel & Wire Co.*	460	8
62½	Worcester, Mass.	American Steel & Wire Co.*	2,819	98
		Total	54,393	5,541

†NOTE: The wage data set forth in this Exhibit G have been compiled from the table appearing on pages 12 to 23, inclusive, of the Report of the Public Contracts Board referred to in the Complaint to which this Exhibit is attached, excluding, however, those plants for which wage data were not included in the table on page 75 of

48½	[illegible]	[illegible]	[illegible]	[illegible]
49	Burnham, Pa.	Logan Iron & Steel Co.	165	38
49½	Wareham, Mass.	Tremont Nail Co.	63	13
50	Parkersburg, W. Va.	Parkersburg Iron & St. Co.	588	99
50	Philadelphia, Pa.	Henry Disston & Sons Co.*	310	30
50	Troy, N. Y.	Troy Furnace Corp.	196	37
50	Dover, N. J.	Ulster Iron Works	250	35
50	Wallingford, Conn.	Wallingford Steel Co.	—	—
50	Worcester, Mass.	Worcester Pressed St. Co.	100	17
52	Huntington, W. Va.	West Virginia Rail Co.	274	53
52	Troy, N. Y.	Poor & Co.	132	24
52½	Branford, Conn.	Atlantic Wire Co.	130	13
53	Baltimore, Md.	Eastern Rolling Mill Co.*	446	78
54	Birdsboro, Pa.	E. & G. Brooke Iron Co.	215	47
54	Harrisburg, Pa.	Central Iron & Steel Co.	1,210	138
54	Harrisburg, Pa.	Harrisburg Steel Corporation	779	85
54	Baltimore, Md.	Rustless Iron & Steel Co.	247	30
55	Bridgeport, Conn.	American Tube & Stamp Co.	639	56
55	Worcester, Mass.	Johnson Steel & Wire Co.	273	50
55	Holyoke, Mass.	G. W. Prentiss & Co.	150	15
56	[illegible]	[illegible]	[illegible]	[illegible]
56	[illegible]	[illegible]	[illegible]	[illegible]
56	[illegible]	[illegible]	[illegible]	[illegible]
56½	[illegible]	[illegible]	[illegible]	[illegible]
56½	[illegible]	[illegible]	[illegible]	[illegible]
56½	[illegible]	[illegible]	[illegible]	[illegible]
56½	Danville, Pa.	Bethlehem Steel Co.	243	52
56½	Williamsport, Pa.	Bethlehem Steel Co.	434	130
56½	Coatesville, Pa.	Bethlehem Steel Co.	325	44
56½	Coatesville, Pa.	Lukens Steel Co.*	1,640	230
56½	Chester, Pa.	South Chester Tube Company**	614	113
56½	Conshohocken, Pa.	Alan Wood Steel Company*	1,379	255
56½	Phoenixville, Pa.	Phoenix Iron Co.	1,200	58
56½	Sparrows Pt., Md.	Bethlehem Steel Co.	15,846	1,477
56½	Harrison, N. J.	Crucible Steel Corp.*	1,580	300
56½	Jersey City, N. J.	Crucible Steel Corp.*	335	18
56½	Syracuse, N. Y.	Crucible Steel Corp.*	1,103	54
56½	Syracuse, N. Y.	Crucible Steel Corp.*	553	229
57	Kenilworth, N. J.	Carpenter Steel Co.	45	0
57	Reading, Pa.	Carpenter Steel Co.	834	56
57	Philadelphia, Pa.	Midvale Steel Co.	2,075	48
57	Claymont, Del.	Worth Steel Co.	876	66
57	Bridgeport, Conn.	Heppenstall Co.*	175	24
58	Worcester, Mass.	G. F. Wright St. & Wire Co.	171	18
59½	Philadelphia, Pa.	Ellwood Ivins St. Tube Wks.	24	5
62½	Trenton, N. J.	American Steel & Wire Co.*	323	9
62½	New Haven, Conn.	American Steel & Wire Co.*	460	8
62½	Worcester, Mass.	American Steel & Wire Co.*	2,819	98
		Total	54,393	5,541

†NOTE: The wage data set forth in this Exhibit G have been compiled from the table appearing on pages 12 to 23, inclusive, of the Report of the Public Contracts Board referred to in the Complaint to which this Exhibit is attached, excluding, however, those plants for which wage data were not included in the table on page 75 of said Report apparently for the reason that such plants were not within the definition of the Iron and Steel Industry that was recommended by said Board. In some cases it has not been possible to reconcile the number of plants shown in such tables with the wage data in the Record referred to in said Complaint, but in each such case the figures appearing in said Report have been used for the purposes of this Exhibit. For a description of the respective Districts referred to in this Exhibit G see paragraph 52 of said Complaint.

*NOTE: An asterisk after the name of a company indicates that the Report referred to in the preceding note shows that such company has an agreement with the Steel Workers Organizing Committee.

**NOTE: The Report referred to in the second preceding note shows that this company has an agreement with the Amalgamated Association of Iron, Steel and Tin Workers of North America.

EXHIBIT G—SHEET No. 1.

Base Rates for Common Labor†

BUFFALO DISTRICT

Base Rates	Location of Plant	Employer	Number of Wage Earners	Number of Common Laborers
59½	Tonawanda, N. Y.	Buffalo Steel Co.	178	110
53	Erie, Pa.	Erie Forge Co.	241	3
53	Erie, Pa.	Erie Forge & Steel Co.	625	9
55	Lockport, N. Y.	Simonds Saw & Steel Co.	398	49
59½	Lackawanna, N. Y.	Bethlehem Steel Co.	6,853	603
59½	Buffalo, N. Y.	Hanna F. Corp.	395	45
59½	Buffalo, N. Y.	Republic Steel Corp.	1,338	59
59½	N. Tonawanda, N. Y.	Tonawanda Iron Corp.	25	8
60	N. Tonawanda, N. Y.	Buffalo Bolt Co.	856	101
		Total	10,879	982

JOHNSTOWN DISTRICT

Base Rates	Location of Plant	Employer	Number of Wage Earners	Number of Common Laborers
58½	Johnstown, Pa.	Bethlehem Steel Co.	7,649	515
58½	Johnstown, Pa.	Carnegie-Illinois Steel Corp.*	1,247	88
		Total	8,896	603

† See Note † on Sheet No. 1.
* See Note * on Sheet No. 1.

Base Rates for Common Labor†

WESTERN DISTRICT

Base Rates	Location of Plant	Employer	Number of Wage Earners	Number of Common Laborers
50	Franklin, Pa.	Franklin Steel Works	212	15
51	Marion, O.	Pollak Steel Co.	335	23
53	Apollo, Pa.	Apollo Steel Co.	1,000	60
55	Canton, O.	Superior Sheet Steel Co.*	700	14
56	Newport, Ky.	Andrews Steel Co.*	2,500	650
56¼	Jackson, O.	Globe Iron Co. —	102	25
56½	Newark, O.	Buckeye Rolling Mill Co.	53	23
58½	Cambridge, O.	Carnegie-Illinois Steel Corp.*	30	17
60	Monaca, Pa.	Pittsburgh Tube Co.	193	2
60½	Dover, O.	Reeves Steel & Mfg. Co.	750	20
62½	Columbus, O.	American Rolling Mill Co.		
62½	Middletown, O.	" " " "		
62½	Zanesville, O.	" " " "	8,809	337
62½	Ashland, Ky.	" " " "		
62½	Butler, Pa.	" " " "		
62½	Cleveland, O.	American Steel & Wire Co.*	3,328	69
62½	Donora, Pa.	" " " "	2,804	134
62½	Rankin, Pa.	" " " "	326	16
62½	Braeburn, Pa.	Braeburn Alloy Steel Co.*	160	16
62½	Bessemer, Pa.	Carnegie-Illinois Steel Corp.*	1,767	113
62½	Canton, O.	" " " "	216	28
62½	Clairton, Pa.	" " " "	4,143	331
62½	Duquesne, Pa.	" " " "	4,105	81
62½	Etna, Pa.	" " " "	266	37
62½	Farrell, Pa.	" " " "	3,304	146
62½	Irvin, Pa.	" " " "	1,116	92
62½	McKeesport, Pa.	" " " "	411	16
62½	Martins Ferry, O.	" " " "	1,473	78
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	Firth Sterling Steel Corp.*	[illegible]	[illegible]
62½	Youngstown, O.	Fitzsimmons Co.	72	22
62½	Pittsburgh, Pa.	Crucible Steel Corp.*	1,447	211
62½	Pittsburgh, Pa.	" " "	609	139
62½	Pittsburgh, Pa.	" " "	68	44
62½	Pittsburgh, Pa.	" " "	2,199	153
62½	Pittsburgh, Pa.	" " "	23	2
62½	Washington, Pa.	Jessop Steel Co.*		
62½	Aliquippa, Pa.	Jones & Laughlin Steel Corp.*	9,247	573
62½	Pittsburgh, Pa.	" " " "	6,843	1,313
62½	LaTrobe, Pa.	LaTrobe Elec. Steel Co.*	529	39
62½	Washington, Pa.	Molybdenum Corp.	74	15
62½	Lorain, O.	National Tube Co.*	7,456	17
62½	Ellwood City, Pa.	" " "	2,394	0
62½	McKeesport, Pa.	" " "	3,334	1
62½	Pittsburgh, Pa.	Pittsburgh Steel Co.*	5,189	430
62½	Canton, O.	Republic Steel Corp.		
62½	Massillon, O.	" " "	4,131	114
62½	Cleveland, O.	" " "	2,218	252
62½	Niles, O.	" " "		
62½	Warren, O.	" " "	5,163	281
62½	Youngstown, O.	" " "	5,825	269
62½	Pittsburgh, Pa.	" " "	181	14
62½	Lowellville, O.	Sharon Steel Corp.*		
62½	Youngstown, O.	" " "	1,786	196
62½	Sharon, Pa.	" " "		
62½	Canton, O.	Timken Steel & Tube Co.*		
62½	Gambrinus, O.	" " " "	—	—
62½	Wooster, O.	" " " "		
62½	Steubenville, O.	Weirton Steel Co.	1,015	186
62½	Weirton, W. Va.	" " "	8,060	1,136
62½	4 in Ohio	Wheeling Steel Corp.*	13,727	1,546
62½	2 in W. Va.	" " "	3,132	671

[illegible]	[illegible]	" " " "		
62½	Butler, Pa.	" " " "		
62½	Cleveland, O.	American Steel & Wire Co.*	3,328	69
62½	Donora, Pa.	" " " "	2,804	134
62½	Rankin, Pa.	" " " "	386	16
62½	Braeburn, Pa.	Braeburn Alloy Steel Co.*	160	16
62½	Bessemer, Pa.	Carnegie-Illinois Steel Corp.*	1,767	113
62½	Canton, O.	" " " "	216	28
62½	Clairton, Pa.	" " " "	4,143	331
62½	Duquesne, Pa.	" " " "	4,105	81
62½	Etna, Pa.	" " " "	266	37
62½	Farrell, Pa.	" " " "	3,304	146
62½	Irvin, Pa.	" " " "	1,116	92
62½	McKeesport, Pa.	" " " "	411	16
62½	Martins Ferry, O.	" " " "	1,473	78
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	" " " "	[illegible]	[illegible]
[illegible]	[illegible]	Firth Sterling Steel Corp.*	[illegible]	[illegible]
62½	Youngstown, O.	Fitzsimmons C.	72	22
62½	Pittsburgh, Pa.	Crucible Steel Corp.*	1,447	211
62½	Pittsburgh, Pa.	" " "	609	139
62½	Pittsburgh, Pa.	" " "	68	44
62½	Pittsburgh, Pa.	" " "	2,199	153
62½	Pittsburgh, Pa.	" " "	23	2
62½	Washington, Pa.	Jessop Steel Co.*		
62½	Aliquippa, Pa.	Jones & Laughlin Steel Corp.*	9,247	573
62½	Pittsburgh, Pa.	" " " "	6,843	1,313
62½	LaTrobe, Pa.	LaTrobe Elec. Steel Co.*	529	39
62½	Washington, Pa.	Molybdenum Corp.	74	15
62½	Lorain, O.	National Tube Co.*	7,456	17
62½	Ellwood City, Pa.	" " "	2,394	0
62½	McKeesport, Pa.	" " "	3,334	1
62½	Pittsburgh, Pa.	Pittsburgh Steel Co.*	5,189	430
62½	Canton, O.	Republic Steel Corp.		
62½	Massillon, O.	" " "	4,131	114
62½	Cleveland, O.	" " "	2,218	252
62½	Niles, O.	" " "		
62½	Warren, O.	" " "	5,163	281
62½	Youngstown, O.	" " "	5,825	289
62½	Pittsburgh, Pa.	" " "	181	14
62½	Lowellville, O.	Sharon Steel Corp.*		
62½	Youngstown, O.	" " "	1,786	196
62½	Sharon, Pa.	" " "		
62½	Canton, O.	Timken Steel & Tube Co.*		
62½	Gambrinus, O.	" " " "	—	—
62½	Wooster, O.	" " " "		
62½	Steubenville, O.	Weirton Steel Co.	1,015	186
62½	Weirton, W. Va.	" " "	8,080	1,136
62½	4 in Ohio	Wheeling Steel Corp.*	13,727	1,546
62½	2 in W. Va.	" " "	3,132	671
62½	Youngstown, O.	Youngstown Sheet & Tube Co.	9,806	349
62½	Pittsburgh, Pa.	Heppenstall Co.*	501	43
		Total	155,755	11,483

† See Note† on Sheet No. 1.
* See Note* on Sheet No. 1.

EXHIBIT G—SHEET No. 3.

236 Filed February 27, 1939

* * *

Motion for Preliminary Injunction

Now come Lukens Steel Company, a corporation, Alan Wood Steel Company, a corporation, South Chester Tube Company, a corporation, Central Iron & Steel Company, a corporation, Harrisburg Steel Corporation, a corporation,
The Eastern Rolling Mill Company, a corporation,
237 and The Atlantic Wire Company, a corporation, the plaintiffs in the above-entitled action, by and through their attorneys, and move this Honorable Court upon their verified Complaint and the affidavits of J. A. Downey, Francis J. Tucker, Henry S. Evans, Marjorie Wilford, Darwin S. Wolcott, John W. Logan and Wilbert Wear, filed herein the 25th day of February, 1939, that this Court grant and issue a preliminary injunction:

(a) enjoining and restraining, pending final determination of this cause, defendants Frances Perkins, Charles V. McLaughlin and L. Metcalfe Walling, and each of them, individually and in their respective official capacities, their and each of their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and their successors in office, and each of them, and their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them, from causing or permitting to become effective, and from promulgating, publishing or holding out, or causing or permitting to be promulgated, published or held out, as effective or valid or authorized by law, the purported Determination of prevailing minimum wages in the Iron and
Steel Industry issued under date of January 16, 1939,
238 signed by the defendant Charles V. McLaughlin, as Acting Secretary of Labor, and entitled "In the Matter of the Determination of Prevailing Minimum Wages in the Iron and Steel Industry" (hereinafter called the Determination); and

(b) enjoining and restraining, pending final determination of this cause, defendants Henry Morganthau, Jr., Christian Joy Peoples, Claude Augustus Swanson, Harry

Hines Woodring, Harold L. Ickes and James A. Farley, and each of them, individually and in their respective official capacities, their and each of their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them, or any of them, and their successors in office, and each of them, and their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them, from (i) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract, or in any advertisement for bids on any such contract or in the specifications for any such contract, or in any bid on any such contract, or in any required form for any such bid, or in any such contract, any stipulation or representation that any person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contract will be paid, without subsequent
239 deduction or rebate on any account, or otherwise, not less than the minimum wages set forth in the Determination, or any stipulation or representation of like purport or effect, and (ii) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract for the manufacture or furnishing of any iron or steel product or any product of the Iron and Steel Industry (as defined in the Determination), or in any advertisement for bids on any such contract, or in the specifications for any such contract, or in any bid on any such contract, or in any required form for any such bid, or in any such contract, the following stipulation or representation:

"All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles or equipment are to be manufactured or furnished

under the contract; *Provided, however,* That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor."

or any stipulation or representation of like purport or effect.

The grounds of this motion are:

(1) the Determination is plainly contrary to, and not authorized by, the Act of Congress approved June 30, 1936 (Public—No. 846—74th Congress; 49 Stat. 2036-2039, c. 881);

240 (2) the Determination is arbitrary and capricious;

(3) the Determination is unsupported by any evidence;

(4) the Determination is not supported by a preponderance of the evidence, as required by the above-mentioned Act;

(5) the Determination was not based upon the fair and impartial hearing required by the above-mentioned Act;

(6) Article 1(b) of Regulations No. 504 prescribed by the Secretary of Labor under the above-mentioned Act (Series A) is plainly contrary to, and not authorized by said Act, and is arbitrary and capricious and void, in so far as it purports to apply to contracts awarded pursuant to invitations for bids issued prior to the effective date of the Determination;

(7) the ruling by defendants Perkins, McLaughlin and Walling that the Determination applies to contracts awarded pursuant to invitations for bids issued prior to the effective date of the Determination is contrary to Article 1101 of such Regulations, arbitrary and capricious and void;

(8) the plaintiffs will suffer immediate and irreparable injury, for which they have no adequate remedy at law, if the preliminary injunction sought herein is not granted; and

(9) the plaintiffs, under all the circumstances presented, are entitled to invoke the aid of this Honorable Court to protect their legal rights from invasion by the defen-

241 dants.

Wherefore, plaintiffs pray that a preliminary injunction as above and as prayed in the Complaint be granted and issued by this Honorable Court.

O. MAX GARDNER,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

ROBERTS B. THOMAS,
Office & P. O. Address:
101 Park Avenue,
New York, N. Y.

GARDNER, MORRISON & ROGERS,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

WEBSTER & GARSIDE,
Office & P. O. Address:
15 Broad Street,
New York, N. Y.

HAUSE, EVANS, STOREY & LICK,
Office & P. O. Address:
Telegraph Building,
Harrisburg, Pa.

COOK & MARKELL,
Office & P. O. Address:
First National Bank Building,
Baltimore, Maryland.

GEORGE WALTER WITNEY,
Office & P. O. Address:
Finance Building,
Philadelphia, Pa.

Attorneys for Plaintiffs.

242 Filed February 25, 1939.

Affidavits of Darwin S. Wolcott, John W. Logan, Francis J. Tucker, Henry S. Evans, Wilbert Wear, J. A. Downey and Marjorie Wilford in Support of Preliminary Injunction.

243 STATE OF NEW YORK,
County of New York, ss:

Darwin S. Wolcott, being duly sworn, upon his oath deposes and says:

244 I am the Vice-President of Lukens Steel Company (hereinafter called the Company), a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. The Company is engaged in the production and sale of certain products of the Iron and Steel Industry, as hereinafter more fully set forth. Its principal office is at Coatesville, in the County of Chester in said Commonwealth, where it also owns and operates a plant consisting of open hearth furnaces, four sheared plate mills, universal mill and flanging department, with an annual capacity of 350,000 tons of sheared plates and 85,000 tons of universal plates and 25,000 tons of rolled blooms and billets. The principal products manufactured and sold by the Company are sheared plates, universal plates and flanged and dished heads. Coatesville is approximately 38 miles from Philadelphia, Pennsylvania, and approximately 312 miles from Pittsburgh, Pennsylvania. The Company is one of the smaller companies in the Iron and Steel Industry.

At its above-mentioned plant, the Company employs at the present time approximately 2,000 wage earners, of whom approximately 125 are common laborers, paid at the rate of 56-½ cents an hour. Substantially all the other wage earners employed by the Company at such plant are paid at rates of pay in excess of such rate of pay for common labor. The Company is a party to an agreement with the Steel Workers Organizing Commitee by and under which a minimum basic hourly earning of 56-½ cents is prescribed and paid. The common labor wage rate paid by the Company is aforesaid is the same as that paid by the only other iron and steel company located in Coatesville.

The common labor wage rate paid by the Company as aforesaid is equal to or higher than that paid by all other industries located in Coatesville. The common labor rate paid in the Company's plant is 6 cents lower than the
245 62-½ cent rate paid by the integrated companies in the Pittsburgh area. A basic wage rate at a similar differential less than that generally prevailing in iron and steel works in Pittsburgh has prevailed in our plant and in other iron and steel plants in its immediate vicinity continuously for upwards of 50 years.

The Company has sold iron and steel products to various agencies of the Government of the United States for many years and desires to continue to bid on Government contracts for such products in the future. The aggregate amounts of the gross sales prices of iron and steel products sold by the Company to agencies of the United States during the years 1937 and 1938 were $107,750 and $277,749, respectively. The agencies of the United States to which the Company sold iron and steel products in such years were the Department of the Navy, including the Bureau of Supplies and Accounts and various Navy yards, and the Department of War. All told, the Company entered into 14 contracts with Government agencies during such years and submitted bids pursuant to many other invitations. The principal products furnished to agencies of the United States pursuant to such contracts were plates. The Company presently has on its books four uncompleted contracts with the Department of the Navy, including its bureaus. The sales price of the iron and steel products to be furnished under such contracts is approximately $100,000. Such contracts also cover plates.

Invitations to bid on a proposed contract with the Bureau of Supplies and Accounts of the Department of the Navy, Schedule No. 5681, for steel plates, sheets and strips, were recently issued. The bids upon such contract are to be opened on March 2, 1939. The invitation for bids on
246 such contract sets forth the determination dated January 16, 1939, of Charles V. McLaughlin, as Acting Secretary of Labor, with respect to prevailing minimum wages in the Iron and Steel Industry, and bidders are, in effect, required to agree to pay the minimum wages set forth in said Determination. The Company desires to bid on such contract.

I have been the Chairman of a Committee of small iron and steel producers, organized in connection with the proceeding in the United States Department of Labor entitled "In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry". As such I have followed the course of such proceedings in detail, am familiar with the above-mentioned Determination dated January 16, 1939, of Charles V. McLaughlin, and have considered its effect upon the Company as well as other small iron and steel producers.

It is my belief that if such Determination is permitted to become effective, the competitive position of the Company, both in bidding on Government contracts and in carrying on private business will be substantially impaired. Increase of the common labor wage rate payable by the Company in the performance of Government contracts will, as a practical matter, necessarily result in an increase of other wage rates paid on such contracts as well as a corresponding increase on common labor rates and other wage rates in business with parties other than the Government. Whereas the cost of production of the large integrated companies in the Pittsburgh and Chicago areas, as well as the largest integrated company carrying on operations in Bir-
247 mingham, Alabama, will not be increased by the Determination, that of the Company will be increased approximately 10%, in so far as labor costs are concerned. As above stated, it is, therefore, quite plain that the Company will be severely penalized if the Determination becomes effective.

DARWIN S. WOLCOTT

Subscribed and sworn to before me this 23rd day of February, 1939.

(Notarial Seal)

SYLVIA A. SHAUGHNESSY.
Notary Public

SYLVIA A. SHAUGHNESSY
Notary Public, Queens County.
Queens Co. Clerk's No. 1849,
Reg. No. 1023 N. Y. Co. Clk's
No. 250, Reg. No. O-S-198

Commission expires March 30, 1940

248 STATE OF NEW YORK,
County of New York, ss:

John W. Logan, being duly sworn, upon his oath deposes and says:

249 I am the Secretary and Treasurer of Alan Wood Steel Company (hereinafter called the Company), a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania. The Company is engaged in the production and sale of certain products of the iron and steel industry. Its main office is located at Conshohocken, in the County of Montgomery, in the Commonwealth of Pennsylvania.

The Company owns and operates a plant at Ivy Rock, in said County, which has an annual capacity of 660,000 tons of steel ingots, 130,000 tons of sheared plates and 234,100 tons of rolled blooms and billets; a plant at Conshohocken, in said County, which has an annual capacity of 108,000 tons of hot and cold rolled sheets; and a plant at Swedeland, in said County, which has an annual capacity of 406,080 gross tons of pig iron.

The above-mentioned plants are located approximately 15 miles from Philadelphia, Pennsylvania, and approximately 340 miles from Pittsburgh, Pennsylvania.

At its above-mentioned plants the Company employs at the present time approximately 1,500 wage earners, of whom approximately 225 are common laborers, paid at the rate of 56-½c an hour, which is the base rate of pay of the Company for common labor. Substantially all the other wage earners employed by the Company at such plants are paid at rates of pay in excess of such base rate of pay for common labor, which rates are, in most instances, computed by adding various differentials to such base rate. The Company is a party to an agreement with the Steel Workers Organizing Committee and said base rate of pay

250 for common labor of 56-½ cents an hour is paid pursuant to said agreement.

I am familiar with the Determination, dated January 16, 1939, of Charles V. McLaughlin, as Acting Secretary of Labor, purporting to determine the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the iron and steel industry, as defined

therein. I have been engaged in the iron and steel business for a period of 35 years and am generally familiar with competitive conditions in the industry. On the basis of the consideration which I have given to the problem created by the purported determination of prevailing minimum wages at 62-½ cents in the locality in which the plants of the Company are situated, particularly when viewed in the light of the fact that the large fully integrated companies in the Pittsburgh area are in general currently paying that minimum wage rate, it is my belief that the competitive position of the Company, both in competition for Government business and in competition for private business, will be substantially impaired if said Determination is permitted to become effective.

The Company has done business with the Government of the United States for many years and desires to continue to bid on Government contracts in the future. The amounts of the gross sales of iron and steel products made by the Company to agencies of the United States in the years 1937 and 1938 were approximately $134,000 and $185,400, respectively.

The agencies of the United States to which the
251 Company sold iron and steel products in such years included the Department of the Navy, including the Bureau of Supplies and Accounts, Washington, D. C., the Boston Navy Yard, the Charleston Navy Yard, the Mare Island Navy Yard, the Norfolk, Virginia, Navy Yard, the Philadelphia Navy Yard and the Washington Navy Yard; the Department of War, including the Watertown, Massachusetts, Arsenal and the Rock Island Arsenal; the Department of Agriculture, Soil Conservation Service, Safford, Arizona; and the Department of Interior, Bureau of Reclamation, Denver, Colorado.

The principal products sold to such agencies of the United States, as aforesaid, were steel sheets and plates.

During the years 1937 and 1938 the Company submitted bids to the following agencies of the United States on contracts which were not obtained by the Company:

Department of the Navy
New York Navy Yard
Boston Navy Yard

U. S. Naval Academy
Portsmouth, N. H. Navy Yard
Norfolk Navy Yard
Mare Island Navy Yard
Philadelphia Navy Yard
Bureau of Supplies and Accounts
Washington, D. C. Navy Yard
Brownfield, Va. Aircraft

Department of War
Watertown Arsenal
Rock Island Arsenal

Department of Agriculture

All told, during the years 1937 and 1938 the Company bid on a total of 310 Government contracts.

The Company regularly receives invitations to bid from agencies of the United States on contracts for prod-
252 ucts of the iron and steel industry. The principal products covered by such invitations are pig iron, steel sheets, steel plates and special alloy steel.

At the present time, the Company has on its books unfilled orders under Government contracts which have been awarded to it, as follows:

Contract	Agency	Value
#65156	Bureau of Supplies & Accounts	$47,306.80
64320	" " " " " (Shipped) ($19,744.14)	85,000.00
#64932	" " " " "	70,576.45
#N151s-30277	Philadelphia Navy Yard	1,430.34
#N151s-30236	" " "	438.25
#N171s-45232	Washington Navy Yard	1,925.12
#N156s-14487	Phila. Naval Aircraft Factory	777.56
	Purchase orders on which performance has not yet been completed:	
Req-9X-4424	Boston Navy Yard	287.32
P. O. 4151	Watertown (Mass.) Arsenal	744.61
		$208,486.45

Invitations to bid have been issued on a proposed contract, Schedule No. 5681, by the Bureau of Supplies and Accounts of the Department of the Navy, for approximately 7,375 tons of steel plates, sheets and strip. The Company desires to bid on approximately 7,000 tons of such iron and steel products. The bids on said invitation are to be opened on March 2, 1939. Under the terms of the invitation to bid,

the above-mentioned Determination, dated January 16, 1939, of Charles V. McLaughlin, as Acting Secretary of Labor, has been called to the attention of all bidders and all bidders must agree to pay the minimum wages specified therein. The Company will not bid on such contract if such Determination is permitted to become effective on
253 March 1, 1939, and apply to the performance of such contract.

JOHN W. LOGAN

Subscribed and sworn to before me this 23rd day of February, 1939.

JOSEPHINE GREGORY SHELFO
Notary Public.

Notary Public
Kings County Clk's No. 990,
Reg. No. 9294 N. Y. County
Clk's No. 541, Reg. No. 9S515.
Queens County Clk's No. 1702,
Reg. No. 6633

Commission expires March 30, 1939

254 COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Francis J. Tucker, being duly sworn, upon his oath deposes and says:

I am Treasurer of South Chester Tube Company, a
255 Pennsylvania corporation, with main office and plant at Chester, Commonwealth of Pennsylvania. The South Chester Tube Company (hereinafter called the Company) owns and operates at Chester, in the County of Delaware, in the said Commonwealth, a plant which has an annual capacity of 85,000 gross tons of wrought iron and steel pipe.

The Company is one of the smaller companies in the Iron and Steel Industry. The par value of the outstanding shares of its capital stock is $1,000,000.

At its above-mentioned plant, the Company employs at the present time approximately 560 productive workers, of whom approximately 100 are common laborers, paid at the rate of 56-½ cents an hour, which is the base rate of pay

of the Company for common labor. All the other wage earners employed by the Company at such plant are paid at rates of pay in excess of such base rates paid for common labor.

In the years 1937 and 1938 the Company sold pipe to the United States Navy Department and the Department of Agriculture. During such years, the Company also submitted a number of bids on which it did not obtain contracts to the War Department, the Bureau of Insular Affairs and the Navy Department.

The Company receives regularly from the Navy Department invitations to bid on purchases of pipe. Such invitations to bid are sent to the Company with considerable frequency.

The Company's plant is located about 15 miles southwest of Philadelphia.

As a result of investigation by conversations over the telephone with responsible executives of companies
256 investigated and through a wage analysis prepared by the Chamber of Commerce of Delaware County, Pennsylvania, I am informed and verily believe that the following are the minimum wage rates for common labor paid by the 25 leading industrial, utility and railroad concerns operating in the City of Chester, Pennsylvania:

Industry	*Minimum wage rate for common labor*
Chemical	49
	58
	55
Light manufacturing and miscellaneous	50
	55
	50
Oil	58*
	63*
	58*
Paper	60
Steel, castings and fabricating	40
	53
	56
	60

*36-hour week computed on 40-hour basis.

Industry	*Minimum wage rate for common labor*
Textiles	63
	44
Railroad	46
	48
City of Chester	50
Utility	52
	40

The common labor base rate of 56-½ cents an hour paid by the Company as aforesaid is paid pursuant to a contract with Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 184, dated April 6, 1938. Said contract, provides, among other things, as follows:

257 "WAGES—The present basic wage scale established by the Company March 16, 1937, shall remain in force so long as this Agreement shall remain in effect, provided, however, should there be any general increase or decrease in the basic wage scales in the Steel Industry in the district in which the Company is located, the Company will change its basic wage scale to conform therewith."

The main reasons for the differential in the common labor base rate paid by the Company of 56-½ cents per hour and the common labor wage rate of 62-½ cents per hour paid by the large integrated companies with plants located at Pittsburgh is that the Company is at a disadvantage in its location at Chester, Pennsylvania in the transportation of raw materials, supplies and equipment from their point of production to the Company's plant. Under my supervision I have had made computations with respect to the supplies and materials purchased by the Company consisting of skelp; unfinished pipe and tubes, couplings, gas coal; pipe balls, sand, pipe coating, furnace brick, wire, machinery and china; and have determined that for an average year's operations of the Company, the added cost of transporting such supplies and materials to Chester is approximately $133,369.03 more than it would be if the Company's plant was located at Pittsburgh. This average annual extra cost of freight at Chester is by no means totally offset by the difference in the costs of labor at Chester and Philadelphia.

There have also been made under my supervision estimates of the cost to the Company during the same average year of an increase in the common labor rate of 6 cents per hour and a comparable increase of the wage rates of other productive workers which would, as a practical matter, become necessary if common labor rates were increased by such amount. To the best of my knowledge and belief,
258 such an increase would cost the Company approximately $100,000 per annum, which, when added to the additional cost for the transportation of materials and supplies because of the location of the plant and the Company at a distance from their source, the Company would be placed at a most decided disadvantage in competing for work in its usual markets, including Government work.

Although it is, of course, difficult to estimate what the effect upon the Company of the Secretary's determination, if sustained, would be, the provision above quoted of the Company's contract with the Amalgamated Association of Iron, Steel and Tin Workers of North America, Lodge No. 184, is of peculiar significance. Presumably, if other steel companies in the same "district" met the requirements of the Secretary's determination, the Company would be obligated under its contract to increase its common labor base rate.

FRANCIS J. TUCKER

Sworn to before me this 24 day of February, 1939.

REGINA L. HOEY
Notary Public

My Commission Expires Feb. 14, 1941

(Notarial Seal)

259 STATE OF NEW YORK,
County of New York, ss:

Henry S. Evans, being duly sworn, upon his oath deposes and says:

I am Vice-President of Central Iron & Steel Com-
260 pany, a Pennsylvania corporation, with main office and plant at Harrisburg, Pennsylvania. The Central Iron & Steel Company (hereinafter called the Company) owns and operates at Harrisburg in the County of Dauphin

Commonwealth of Pennsylvania, a plant which has an annual capacity of approximately 200,000 tons of sheared plates and sheets; universal plates and rolled blooms and billets for forging purposes.

The Company is one of the smaller companies in the Iron and Steel Industry. The par value of the outstanding shares of its capital stock is $2,245,400.00.

At its above-mentioned plant the Company employs at the present time approximately 1,200 wage earners, of whom approximately 150 are common laborers paid at the rate of 54 cents an hour, which is the base rate of the Company for all its labor.

The Company has had contractual relationship with the United States Government for upward of 20 years and for only short periods during that time has it been without a Government contract in progress. The amount of its Government work has been substantial and for the last 10 years has averaged about 8% of its tonnage. The products manufactured or furnished to the Government consist of plates, slabs and sheets and the Government agencies with which the Company has made contracts include the Navy Department, the War Department and the Panama Canal Administration.

During 1937 and 1938 the Company submitted bids in respect of contracts not obtained to the Navy Department, the War Department and the Panama Canal Administration. During 1937 and 1938 the number of such bids
261 was substantial. At the present time the Company has several contracts on which performance has not yet been completed, amounting in the gross to a substantial amount. These are principally with the Navy Department. As a practical matter, if the Company obtained a Government contract requiring payment of wages in accordance with the Determination dated January 16, 1939, of Charles V. McLaughlin, as Acting Secretary of Labor, with respect to prevailing minimum wages in the Iron and Steel Industry, all Government contracts now in progress would have to be completed at the new wage rate.

The Company is now in receipt of invitations to bid for two Government contracts to be awarded after March 1, 1939. These are for an aggregate of approximately 7,500 tons of plates for the Navy Department and Panama Canal

Administration. These invitations to bid each contain a requirement that the wages as determined by the Acting Secretary of Labor shall be paid.

In recent years the Company has built extensions and additions to its mill and inspection shed facilities for the purpose of more efficiently handling its Government business at a total expense of approximately $40,000.

The Company regularly, for several years, has received invitations to bid from the Navy Department, the War Department and the Panama Canal Administration for its products, consisting of plates, slabs and sheets.

The Company's only plant is located at Harrisburg, Pennsylvania, at which at the present time it employs approximately 1,200 wage earners of which approximately 150 are common laborers. It pays a common labor rate of 54 cents per hour. Said common labor rate is the same as that paid by the other steel plant in the same City.
262 There is one other steel plant in the adjoining municipality at which a common labor rate of 56-½ cents per hour is paid. The Company's said common labor rate is well above the average of the minimum wages for common laborers in other industries and the railroads in the City of Harrisburg.

The Company is not integrated. It does not own or control any ore, iron ore or metallurgical coal. It does not operate any blast-furnaces. It buys all its raw materials and converts them into steel. Its degree of mechanization and efficiency are comparable to other small steel plants making the same types of product. But because the Company is a small non-integrated plant, its natural markets are in the East and along the Atlantic seaboard.

In the vicinity of its plant, the Company is compelled to compete for its labor supply with machine shops, building construction, the Highway Department of the State of Pennsylvania and with large railroad car building and repair shops located in the Harrisburg district.

If the Company were required to comply with the above-mentioned determination of the Acting Secretary of Labor, it would be driven out of competition for Government contracts.

HENRY S. EVANS

Subscribed and sworn to before me this 23rd day of February, 1939.

WM. J. MILLER Notary Public
WM. J. MILLER *Notary* Public
Clk. 180 New York County
Reg. 0M104 Commission Mar.
30, 1940 Expires

Notarial Seal)

63 STATE OF NEW YORK,
County of New York, ss:

Wilbert Wear, first being duly sworn, deposes and says:

I reside in the City of Harrisburg, County of Dauphin, Commonwealth of Pennsylvania.

I am president and treasurer of Harrisburg Steel Corporation, a Pennsylvania corporation having its principal office and plant in the City of Harrisburg, County of Dauphin, Commonwealth of Pennsylvania. Said Harrisburg Steel Corporation was incorporated under the laws of the Commonwealth of Pennsylvania December 28, 1899.

The Corporation is one of the smaller companies in the steel industry and manufactures steel products and steel specialty products. Among such products are steel billets, slabs, coils, couplings, cylinders, flanges, liquefiers and munitions. It has an annual capacity of 77,500 ingot tons.

For upwards of twenty years the Corporation has entered into and performed contracts with the United States Government and Departments thereof with respect to the sale of steel products. As of the date hereof, it is duly licensed by the Department of State of the United States Government to manufacture and sell munitions. Its relations with the United States Government and all Departments thereof have at all times been and are satisfactory.

During the calendar year 1937 the Corporation sold to the United States Government or to Departments thereof products aggregating in value $184,807.65. During the calendar year 1938 products so sold aggregated in value
64 $71,436.19. Its aggregate sales for all purposes during the years 1937 and 1938 were respectively $4,687,-
92.43 and $1,926,950.77.

The products so manufactured and sold to the United States Government or Departments thereof during the calendar years 1937 and 1938 were high pressure gas cylinders, steel flanges and aerial bombs. The Departments of the United States Government to which said products were sold were the following: the Department of Agriculture, the Department of Commerce, the Department of the Interior, the Navy Department and the War Department.

During the calendar years 1937 the Corporation unsuccessfully bid with respect to contracts for which invitations to bid were issued by Picatinny Arsenal, the National Bureau of Standards, the Bureau of Supplies and Accounts and the Navy Department. During the calendar year 1938 the Corporation unsuccessfully bid with respect to contracts for which invitations to bid were issued by Charleston Navy Yard, Brooklyn Navy Yard, Bureau of Supplies and Accounts of the Navy Department, the National Bureau of Standards for the Helium Plant at Amarillo, Texas, the Chemical Warfare Service, the Edgewood Arsenal at Edgewood, Maryland, the Panama Canal Administration and the Picatinny Arsenal.

265 During the calendar year 1937 it was the successful bidder with respect to 10 contracts and during the calendar year 1938 it was the successful bidder with respect to 23 contracts, whereas the Corporation was an unsuccessful bidder on 5 occasions during the calendar year 1937 and on 9 occasions during the calendar year 1938. As of the date hereof there are no Government contracts on which the Corporation has not completed performance.

The Corporation desires to continue to bid on Government contracts.

The Corporation maintains one plant only, the same being located at Harrisburg, Pennsylvania. The average number of employees of the Corporation during the calendar year 1938 was 815. The Corporation pays its common labor 54 cents per hour. This rate of 54 cents per hour is identical with that paid by other steel plants situated in the City of Harrisburg. The wage rate of 54 cents per hour for common labor is, however, substantially above the average of wages paid for common labor in all other industries situated in the City of Harrisburg. The prevailing wage rate per hour for common labor in all other in-

dustries in the City of Harrisburg is 40 cents and 45 cents.

The Corporation is self-contained from open hearth to finished product. It is, however, not in any sense an integrated company and is required to purchase its pig iron and other raw materials from others.

266 Deponent believes that his Corporation could not successfully bid for Government contracts if required to pay the common labor wage rate of 62-½ cents per hour; that the Corporation burdened with such a wage rate for common labor could not compete with the larger companies having greater capital, modern machinery, and increased efficiency realized through completely integrated units; and that said larger companies would be uniformly successful in underbidding the smaller companies of which Harrisburg Steel Corporation is one.

During the calendar year 1938 while the Corporation suffered a loss in its operations, such loss would have been substantially greater if the common labor wage rate had been fixed at 62-½ cents per hour.

That in the opinion of deponent if the Determination of the Secretary of Labor is permitted to stand it must inevitably result in the placing of an intolerable burden upon the small non-integrated steel companies and tend to destroy competition not only with respect to Government contracts but with respect to business generally.

WILBERT WEAR

Sworn to before me this 23rd day of February, 1939.

KATHRYN ROTHWELL *Notary Public*, Queens County Queens Co. Clk's No. 2539, Reg. No. 1815 N. Y. Co. Clk's No. 246, Reg. No. OR159

Commission Expires March 30, 1940

(Notarial Seal)

267 STATE OF NEW YORK,
County of New York, ss:

J. A. Downey, being duly sworn, upon his oath deposes and says:

I am the President of the The Eastern Rolling Mill Company (hereinafter called the Company), which is a Maryland corporation.

The Company is a non-integrated manufacturer of
268 black, galvanized and stainless steel sheets. The Company purchases its raw material in the form of sheet bars and converts such raw material into sheets for sale by the Company.

The Company owns and operates one plant, which is situated in Colgate, Baltimore County, Maryland, immediately outside of the limits of the City of Baltimore, Maryland. The annual capacity of such plant is approximately 90,000 net tons of sheets.

The Company has made sales to various Government agencies over a period of years. In the year 1937 the gross amount of the Company's sales to Government agencies was $27,070.83. In the year 1938 the gross amount of the Company's sales to Government agencies was $3,346.01.

The Company regularly receives invitations to bid from the United States Navy Department, and the Company's sales have been almost entirely to that Department.

The Company employs approximately 500 wage earners at its above-mentioned plant, of whom approximately 80 are paid at the base rate of the Company for common labor, which base rate is 53 cents an hour. The Company has for about two years been a party to an agreement with the Steel Workers Organizing Committee, and such base rate of 53 cents an hour is paid in accordance with that agreement.

If the Company were required to raise its base rate for common labor from 53 cents an hour to 62-½ cents an hour and other rates as necessitated thereby in order to bid on Government contracts, I believe that there is grave danger that the Company would be forced out of competition for Government contracts.

If the base rate of the Company for common labor
269 had been 62-½ cents per hour in 1937 and 1938, and the wage rates of the Company for other classes of labor had been approximately 18% higher than they actually were in such years, and other expenses of the Company and the sales prices of the Company's products had remained the same, the operations of the Company in 1937

actually would have resulted in a loss instead of a profit of about $121,000, and the loss in 1938 would have been approximately $100,000 greater.

The Company does not have any apprentices, learners or handicapped workers or any other class of labor which is paid less than the base rate of the Company for common labor.

J. A. DOWNEY

Subscribed and sworn to before me this 23rd day of February, 1939.

SYLVIA A. SHAUGHNESSY
Notary Public, Queens County
Queens Co. Clerk's No. 1849,
Reg. No. 1023 N. Y. Co. Clk's
No. 250, Reg. No. O-S-198

Commission expires March 30, 1940

(Notarial Seal)

270 STATE OF NEW YORK,
County of New York, ss:

Marjorie Wilford, being duly sworn, upon her oath deposes and says:

I am the Treasurer of The Atlantic Wire Company (hereinafter called the Company), a corporation duly organized and existing under the laws of the State of Connecticut.

271 The company is a non-integrated producer of plain wire. The Company buys its raw material in the form of hot rolled steel rods and draws such rods into wire for sale by the Company. The annual capacity of such mill is approximately 22,000 tons of plain wire and 500 tons of galvanized wire.

The Company owns and operates one plant, a wire mill, which is situated in Branford, Connecticut.

The Company is a very small company. The par value of the outstanding shares of its common stock is $25,000.

At its above-mentioned plant the Company employs approximately 150 wage earners, of whom approximately 15 are paid at the base rate of the Company for common labor, which base rate is 52-½ cents per hour. All the other wage

earners employed by the Company are paid at rates of pay in excess of such base rate of pay for common labor, which rates are generally computed by adding various differentials to such base rate.

I am aware that large appropriations have been made by Congress and I understand that more large appropriations are contemplated, pursuant to which large purchases of iron and steel products will be made by various Government agencies, and, in my opinion, the Company will desire from time to time to bid on Government contracts for wire.

I am familiar with the determination of prevailing minimum wages in the iron and steel industry issued under date of January 1, 1939, by Charles V. McLaughlin as Acting Secretary of Labor. If the Company, in order to bid on Government contracts, will be required to agree to pay its common laborers a minimum wage of 62-½ cents an
272 hour, the effect of such an increase in the present rate of wage for the common laborers employed by the Company, together with the necessary adjustment in the rates of wages now paid to the other wage earning employees of the Company, would be such as to make it impracticable for the Company to bid on any Government contracts.

MARJORIE WILFORD

Subscribed and sworn to before me this 24th day of February, 1939.

THOMAS F. HILBERT, JR.
Notary Public.

THOMAS F. HILBERT, JR.
Notary Public, Bronx County
Bronx Co. Clerk's No. 164, Reg. No. 172 H 39 N. Y. Co. Clerk's No. 813, Reg. No. 9 H 514
Certificates filed also in Richmond, Orange, Putnam and Rockland Co's.

Commission expires March 30, 1939

(Notarial Seal)

273 Filed February 28, 1939.

Temporary Restraining Order

Upon consideration of the verified complaint and the affidavits of J. A. Downey, Francis J. Tucker, Henry S. Evans, Marjorie Wilford, Darwin S. Wolcott, John W. Logan and Wilbert Wear, filed herein the 25th day
274 of February, 1939, and upon application by plaintiffs for a temporary restraining order, and after notice given, and hearing had, it appearing clearly that immediate and irreparable injury, loss and damage will result to the plaintiffs, and to each of them, by reason of the following:

1. The Act of Congress approved June 30, 1936 (Public —No. 846—74th Congress; 49 Stat. 2036-2039; c. 881), (hereinafter called the Public Contracts Act) provides, in substance and among other things, that in any contract made and entered into by any agency of the United States for the manufacture or furnishing of materials, supplies, articles and equipment in any amount exceeding $10,000, there shall be included a representation and stipulation "That all persons employed by the contractor * * * in the performance of the contract will be paid * * * not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles or equipment are to be manufactured or furnished under said contract * * *"; "*Provided*, however, That the provisions [of the Act] requiring the inclusions of representations with respect to minimum wages shall apply only to * * * contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor."

2. The defendant Charles V. McLaughlin, as Act-
275 ing Secretary of Labor, with the approval and acting participation of defendant Perkins, as Secretary of Labor, has made a determination under date of January 16, 1939, entitled "In the Matter of the Determination of the Prevailing Minimum Wages of the Iron and Steel Industry" (hereinafter referred to as the Determination),

which purports to define the Iron and Steel Industry and to determine the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of such Industry in six areas, designated as "localities", which, in the aggregate, constitute the entire United States. Such Determination or "decision", as it has been referred to in a subsequent order dated January 30, 1939, of the defendant McLaughlin, is by its terms, as modified by such subsequent order, to become effective on March 1, 1939.

3. The Determination states that "in the locality consisting of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine, and that portion of the State of West Virginia comprised within the counties of Hancock, Brooke, Ohio, Marshall, Harrison, and Monogalia, and the District of Columbia", the prevailing minimum wage is determined to be 62-½ cents per hour.

4. Plaintiffs allege that the Determination is void for the reasons, among others, that it is plainly con-
276 trary to the Public Contracts Act, arbitrary and capricious, and unsupported by any evidence taken at the hearing in the above-entitled matter and an attempt to raise and fix wages rather than an ascertainment of minimum wages currently paid and actually prevailing in the several localities in which their plants are situated. As further grounds for relief, they alleged that such hearing was not fair and impartial.

5. The plaintiffs allege that they are among the smaller manufacturers of iron and steel products; that they have been selling iron and steel products to agencies of the United States for years; that at the present time some of them are engaged in performance of contracts with such agencies covering the manufacture of substantial amounts of iron and steel products; that the wages paid to common laborers by the several plaintiffs vary, depending on the particular plaintiff and the particular locality, from 50-½ cents to 56-½ cents per hour; that the 62-½ cent rate provided in the Determination is, except in one instance, not paid by any iron and steel company in any city, county, village or other civil subdivision of any State in which the plants of any of the plaintiffs are located; that a rate lower

than 62-½ cents per hour is paid by all but 3 (employing a relatively small number of common laborers) of 60 plants operating in the entire area comprising the New England States and the States of Delaware, New Jersey and Maryland, that part of the States of New York and Pennsylvania lying east of a line drawn north and south through the most easterly point of Altoona, Pennsylvania, and that part of the State of West Virginia lying south of a line drawn west in extension of the southerly boundary of the State of Pennsylvania; and that the plants of all plaintiffs are situated in such area.

277 6. Between March 1, 1939, and March 10, 1939, bids heretofore invited on four contracts, designated Nos. 5681, 5682, 900/2380 and 900/2381 (hereinafter referred to as the "Contracts") for the manufacture of iron and steel products for very substantial amounts will be opened by the Navy Department, with a view to awarding contracts thereon. Plaintiffs Lukens Steel Company, Alan Wood Steel Company and Central Iron and Steel Company, are desirous of bidding on the Contracts.

7. Plaintiffs allege that if the Determination is permitted to become effective, said three plaintiffs will be unable to bid on the Contracts, on which bids have been invited by the Secretary of the Navy, and are to be opened on March 2 and March 9, 1939, without agreeing to pay minimum wages of 62-½ cents per hour to common laborers engaged in the performance thereof since defendant McLaughlin has determined that the prevailing minimum wages being paid to common laborers in the iron and steel industry in the locality in which said three plaintiffs are located are 62-½ cents per hour, and that such determination shall apply to all contracts awarded after March 1, 1939 (whether or not pursuant to invitations for bids issued prior to said date), and since defendant Peoples has directed and intends to continue to direct every agency of the United States desiring to enter into any such contract after March 1, 1939, to include a stipulation or representation therein that all persons employed by the contractor in the performance of the contract will be paid not less than the minimum wages set forth in the Determination, and since defendant Swanson, unless restrained, intends to and will give

effect to said Determination by rejecting any bid not containing such a stipulation or representation.

278 8. Plaintiffs allege that an increase in the present wages paid by plaintiffs to common laborers on Government contracts will, as a practical matter, bring or tend to bring about an increase in plaintiffs' wage rates for all classes of wage-earners and all classes of work. Moreover, plaintiffs allege that if the Determination becomes effective, there is grave danger that they will no longer be able successfully to compete, in Government business, with large, fully integrated companies with plants located to the west or south which enjoy more favorable geographical positions and which are already paying 62-½ cents an hour or are not required by the Determination to pay more than 45 cents an hour.

9. Plaintiffs allege that they have no adequate remedy at law, or, indeed, any remedy whatsoever at law.

IT IS ORDERED, ADJUDGED AND DECREED:

That defendants Frances Perkins, individually and as Secretary of Labor and Claude Augustus Swanson, individually and as Secretary of the Navy of the United States, their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them, or any of them, and their successors in office, and each of them, and their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them, be, and each of them hereby is, enjoined and restrained from (i) giving any effect whatsoever to said Determination of defendant McLaughlin with respect to any bids which may be submitted by plaintiffs Lukens Steel

279 Company, Alan Wood Steel Company and Central Iron and Steel Company on the Contracts, and (ii) from refusing to accept any bids made by said three plaintiffs on the Contracts on the ground that such bids do not contain the stipulation or representation that all persons employed by the contractor will be paid not less than the minimum wages set forth in the Determination. This Order shall not prevent defendant Swanson from refusing to accept any such bid on the Contracts for the reason that

such bid is not the lowest bid or for any other reason permitted by law except as herein provided.

This order shall expire on March 7th, 1939 unless within said time it is extended for a like period for good cause shown or further modified by order of this Court, provided that the plaintiffs herein furnish a joint and several bond or an undertaking to defendants Perkins and Swanson as required by Rule 65(c) of the Federal Rules of Civil Procedure in the sum of $25,000, or make a deposit in the Registry of this Court of the sum of $25,000 in lieu thereof.

JENNINGS BAILEY
Justice.

Issued at 3:28 o'clock P. M., this 28th day of February, 1939.

Filed and entered at 4 o'clock P. M., this 28th day of February, 1939.

280 Filed March 1, 1939.

Order

IT IS ORDERED that the above-entitled cause be, and the same hereby is, set down for final hearing on Tuesday, March 7, 1939, at ten o'clock A. M., and that a copy of this order be served on each of the defendants herein.

JENNINGS BAILEY
Justice.

No objection:

H. L. UNDERWOOD
Assistant United States Attorney

281 Filed March 1, 1939.

Notice

To:

Madam Frances Perkins,
Individually and as Secretary of Labor,
14th Street and Constitution Avenue,
Washington, D. C.

Charles V. McLaughlin, Esq.,
Individually and as Assistant Secretary of Labor,
14th Street and Constitution Avenue,
Washington, D. C.

L. Metcalfe Walling, Esq.,
Individually and as Administrator of the Division of Public Contracts of the Department of Labor,
14th Street and Constitution Avenue
Washington, D. C.

Henry Morgenthau, Jr., Esq.,
Individually and as Secretary of the Treasury,
15th Street and Pennsylvania Avenue,
Washington, D. C.

Christian Joy Peoples, Esq.,
Individually and as Director of the Procurement Division of the Department of the Treasury,
7th & D Streets, S. W.,
Washington, D. C.

Claude Augustus Swanson, Esq.,
Individually and as Secretary of the Navy,
18th Street and Constitution Avenue,
Washington, D. C.

282 Harry Hines Woodring, Esq.,
Individually and as Secretary of War,
17th Street, South of Pennsylvania Avenue,
Washington, D. C.

Harold L. Ickes, Esq.,
Individually and as Secretary of the Interior,
Interior Building,
Washington, D. C.

James A. Farley, Esq.,
Individually and as Postmaster General,
Pennsylvania Avenue, between 12th and 13th Streets
Washington, D. C.

Frank Murphy, Esq.,
Attorney General of the United States,
Department of Justice,
Washington, D. C.

David A. Pine, Esq.,
United States Attorney for the District of Columbia,
Court House,
Washington, D. C.

PLEASE TAKE NOTICE that the Court has set the above-entitled cause down for final hearing at ten o'clock A. M., Tuesday, March 7, 1939, in accordance with its order, copy of which is attached hereto,

FURTHER PLEASE TAKE NOTICE that at said hour and date aforesaid, or as soon thereafter as counsel can be heard, the plaintiffs' Motion for Preliminary Injunction, copy of which is attached hereto, will likewise be brought on for hearing.

O. MAX GARDNER,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

ROBERTS B. THOMAS,
Office & P. O. Address:
101 Park Avenue,
New York, N. Y.

GARDNER, MORRISON & ROGERS,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

283

WEBSTER & GARSIDE,
Office & P. O. Address:
15 Broad Street,
New York, N. Y.

HAUSE, EVANS, STOREY & LICK,
Office & P. O. Address:
Telegraph Building,
Harrisburg, Pa.

COOK & MARKELL,
Office & P. O. Address:
First National Bank Building,
Baltimore, Maryland.

GEORGE WALTER WITNE
Office & P. O. Address:
Finance Building,
Philadelphia, Pa.

Attorneys for Plaintiffs.

284 Filed March 3, 1939.

It having been orally stated to me by counsel for the de fendants that the defendants will not be able to file an swers before Tuesday next, but will file a motion to dis miss the complaint during the afternoon of this day (March 3rd, 1939), it is ordered that the motion or motions to dis miss be set for hearing on Tuesday next, that date being the day for the expiration of the temporary restraining order heretofore made, and for the hearing of such other motions as to the continuance of the temporary restrain ing order or for a temporary injunction as counsel may be advised.

JENNINGS BAILEY
Justice

285 Filed March 6, 1939.

Motion to Dismiss Complaint

The defendants move the Court to dismiss the complain and this action for the following reasons:

1. Because the court lacks jurisdiction of the subject matter of this action;

2. Because the complaint fails to state a claim upon which relief can be granted;

3. Because the complaint fails to allege facts showing any right of any of the plaintiffs entitling them to maintain this action;

4. Because the complaint fails to state any facts entitling any of the plaintiffs to any relief in equity;

5. Because the complaint fails to state facts entitling any of the plaintiffs to a declaratory judgment;

6. Because the facts alleged in the complaint show that this is a suit against the United States and the United States has not consented to be sued.

EDWARD J. ENNIS
Attorney, United States Department of Justice.
Attorney for the Defendants.

286 *Notice*

Filed March 6, 1939.

To:

O. Max Gardner,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

Roberts B. Thomas,
Office & P. O. Address:
101 Park Avenue,
New York, N. Y.

Gardner, Morrison & Rogers,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

Webster & Garside,
Office & P. O. Address:
15 Broad Street,
New York, N. Y.

Hause, Evans, Storey & Lick,
Office & P. O. Address:
Telegraph Building,
Harrisburg, Pa.

Cook & Markell,
Office & P. O. Address:
First National Bank Building,
Baltimore, Maryland.

George Walter Witney,
Office & P. O. Address:
Finance Building,
Philadelphia, Pa.

Attorneys for Plaintiffs.

Please take notice that the undersigned will bring the above motion on for hearing before this Court in the United States District Court Building, Washington, District of Columbia, on the 7th day of March, 1939, at eleven o'clock, A. M., or as soon thereafter as counsel can be heard.

EDWARD J. ENNIS
Attorney, United States Department of Justice.
Attorney for the Defendants

287 Filed March 6, 1939.

Motion to Intervene

Now comes the Steel Workers Organizing Committee by its attorneys and respectfully moves this court for an order granting leave to the Steel Workers Organizing Committee to intervene in the above-entitled proceedings, and for such other and further relief as may be proper, and for grounds of this motion show:

1) That the Intervenor has the right to intervene under Rule 24 of the Rules of Civil Procedure for the District Courts of the United States and under the provisions of the so-called Public Contracts Act of June 30, 1936. (49 Stat. 2036);

2) That the Intervenor has a substantial interest in these proceedings;

3) That the Intervenor was a party to the proceedings entitled "In the Matter of the Prevailing Minimum Wage in the Iron and Steel Industry" resulting in a determination, pursuant to the aforesaid Public Contracts Act, which are the subject of the action herein;

4) That the application for intervention herein is timely; Intervenor's interests are not adequately represented by any of the existing parties; Intervenor will be bound by any judgment in this action, and will be adversely af-

288 fected by any judgment, interlocutory or otherwise, granting in whole or in part the relief requested by the plaintiffs herein; Intervenor's claim, and the main action have common questions of law and fact, and the inter-

vention herein will in no wise delay or prejudice an adjudication of the rights of the original parties.

Respectfully submitted,

LEE PRESSMAN
JOSEPH KOVNER
ANTHONY WAYNE SMITH
Attorneys for Intervenors

SIDNEY V. SMITH
Of Counsel

289 Filed March 6, 1939

Notice of Motion for Leave to Intervene

Sirs:

Please take notice that on the annexed motion and petition, and on all other proceedings heretofore had herein, the undersigned will move before this court at a stated term thereof for motions, to be held at the District Court of the United States for the District of Columbia at 10:00 o'clock in the forenoon on the 6th day of March, 1939, or as soon thereafter as counsel can be heard, for an order granting leave to the Steel Workers Organizing Committee, to intervene in the above entitled proceedings, and for such other and further relief as may be proper.

Yours, etc.

LEE PRESSMAN
JOSEPH KOVNER
ANTHONY WAYNE SMITH
Attorneys for Intervenors

SIDNEY V. SMITH
Of Counsel

290 To:

O. Max Gardner
Woodward Building,
Washington, D. C.

Roberts B. Thomas,
101 Park Avenue,
New York, N. Y.

Gardner, Morrison & Rogers
Woodward Building,
Washington, D. C.

Webster & Garside
15 Broad Street,
New York City, N. Y.

Hause, Evans, Storey & Lick,
Telegraph Building,
Harrisburg, Pa.

Cook & Markell
First National Bank Bldg.
Baltimore, Md.

George Walter Witney
Finance Bldg.,
Philadelphia, Pa.

Attorneys for Plaintiffs

Edward J. Ennis, Attorney,
United States Department
of Justice,
Washington, D. C.
Attorney for Defendants

A copy of the foregoing Notice, Motion, Petition and Points and Authorities received this 6th day of March, 1939.

Copy received March 6, 1939 at 3.00 P. M.

GARDNER MORRISON & ROGERS
Attorney for Plaintiffs

EDWARD J. ENNIS
Attorney for Defendants

291 Filed March 6, 1939

Petition of Steel Workers Organizing Committee for Leave to Intervene.

The petition of the Steel Workers Organizing Committee for leave to intervene in these proceedings respectfully represents and alleges:

FIRST. The Steel Workers Organizing Committee (hereinafter referred to as SWOC) is an unincorporated association, with its principal office at 1500 Commonwealth Building, Pittsburgh, Pennsylvania; Philip Murray is its chairman and David McDonald is its secretary-treasurer; it is the nation-wide representative for purposes of collective bargaining of over 500,000 workers employed in the iron, steel, and tin, and allied products industry throughout the United States; it has collective bargaining agreements with over five hundred employers covering the majority and some of the largest of the producing units in said industry.

SECOND. On or about July 5th, 1938, Philip Murray, Chairman of the SWOC requested the Honorable Frances Perkins, Secretary of Labor, to determine the prevailing minimum wages for persons employed in the iron and steel industry pursuant to the provisions of the Public Contracts Act. A true and exact copy of the letter containing this request is attached hereto, made a part hereof and marked Exhibit "A".

292 THIRD. Section 2 of the Public Contracts Act approved June 30th, 1936 (49 Stat. 2036) provides in part as follows:

"All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: Provided, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America."

FOURTH. Pursuant to the provisions of the Public Contracts Act certain proceedings entitled "In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry" were instituted on or about July 11th, 1938, and resulted in a determination of the prevailing minimum wages in the iron and steel industry. The said proceedings and determination are in all respects valid, lawful and constitutional. Intervenor

refers to Plaintiffs' Exhibits "A" and "E", purporting to be respectively a true and exact copy of the recommendations of the Public Contracts Board and of the determination by the Secretary of Labor of the prevailing minimum wages in the iron and steel industry.

FIFTH. The SWOC was a party to the aforesaid proceedings and presented evidence and made arguments on all matters and issues arising therein.

SIXTH. The SWOC has an interest in the controversy presented by the complaint herein in that, among other things:

a) As the complaint itself shows, the proceedings herein are essentially concerned with the validity of a determination by the federal government of what shall be the rate of wages to be paid to common laborers in the iron and steel industry employed on public contracts within the meaning of the Public Contracts Act. The complaint further
293 shows that the plaintiffs are now paying wage rates below the amount required to be paid by contractors under the terms of the aforesaid determination of the prevailing minimum wages in the iron and steel industry. By virtue of Section 2 of the Public Contracts Act herein mentioned, such workers have a right to recover any such underpayments of wages in a law suit brought on their behalf by the United States Attorney General.

b) The determination of the prevailing minimum wages in the iron and steel industry affects not only the employees of the plaintiff corporations but affects directly all of the common laborers in the iron and steel industry, and, by fixing the wage rate for the classification of common labor, directly affects wage rates to be paid to all workers in the iron and steel industry.

c) Throughout the aforesaid proceedings which followed the request made by Philip Murray, the workers in the iron and steel industry have relied upon SWOC for the full protection of their interest in any determination of the prevailing minimum wages under the Public Contracts Act, and SWOC has assumed this responsibility as the national collective bargaining representative of these iron and steel workers.

d) The determination of the prevailing minimum wage for the iron and steel industry reflects the wage and hour

standards achieved by SWOC through the process of collective bargaining. Such agreements are in accord with the fundamental policy of the federal government with respect to labor as set forth in the National Labor Relations Act, enacted July 5th, 1935, (49 Stat. 449) tending to promote industrial peace and eliminate labor disputes. The maintenance of production in the iron and steel industry without interruption by labor disputes is essential
294 to the welfare of this country, and many of these contracts covered by the aforesaid determination call for supplies to the Army and Navy for national defense.

SEVENTH. The intervention of SWOC is timely, its interest is not adequately represented by any of the existing parties, it will be bound by any judgment in the action and will be adversely affected by any judgment in whole or in part prayed for in the complaint; the intervenor's claim and the main action have common questions of law and fact, the intervention will not unduly delay and prejudice the adjudication of the rights of the original parties, and intervenor has no other adequate remedy to protect its interest.

WHEREFORE Steel Workers Organizing Committee respectfully prays this honorable Court:

1) That leave to intervene in the proceedings herein be granted on its own behalf and on behalf of those it represents, in the same manner and with the same effect as if named in the original complaint as a defendant with the full right to contest any issues of fact or law upon all matters raised by the proceedings herein;

2) That the relief prayed for in the complaint herein be denied and the said complaint be dismissed; and

3) For such other and further relief as may be proper.

Respectfully submitted,

LEE PRESSMAN
JOSEPH KOVNER
ANTHONY WAYNE SMITH

Of Counsel
SIDNEY V. SMITH

295 *Exhibit A*

Steel Workers Organizing Committee
Pittsburgh, Pa.

July 5, 1938.

Honorable Frances Perkins,
Secretary of Labor,
Washington, D. C.

Dear Miss Perkins:

On behalf of the Steel Workers Organizing Committee, I beg to request that you determine pursuant to the provisions of the Walsh-Healey Act, the prevailing minimum wages in the several occupations for persons employed in the steel manufacturing and steel fabricating industry.

Numerous contracts are being awarded by the United States Government to corporations in this industry and we believe that additional protection would be afforded to the steel workers through the determination of such prevailing minimum wages.

Very truly yours,

(signed) PHILIP MURRAY
Chairman

296 DISTRICT OF COLUMBIA: *ss*

Be it remembered that on this 6th day of March 1939, personally appeared before me, the undersigned, Lee Pressman who being duly sworn did depose and say that the facts set out in the foregoing petition are true to the best of his knowledge and belief, that he is one of the attorneys for the intervenor herein, that the reason why this petition is verified by him is that the principal officers of the intervenor are located at Pittsburgh, Pennsylvania, that the source of his knowledge and belief are his own personal knowledge and the records and correspondence of the intervenor.

LEE PRESSMAN

Sworn to and subscribed to before me this 6th day of March, 1939.

EDNA W. SCHALLER
Notary Public

(Seal)

297 Filed March 7, 1939.

Affidavit of Henry S. Evans

COMMONWEALTH OF PENNSYLVANIA
County of Dauphin, ss:

Before me, a Notary Public in and for the County of Dauphin, Commonwealth of Pennsylvania, personally appeared **Henry S. Evans** who being duly sworn according to law deposes and says:

1. I am the Executive Vice President of Central Iron & Steel Company (one of the Plaintiffs in the above entitled action) and have been continuously connected with my Company since 1915.

2. If the Determination of Defendant Perkins (acting by and through Defendant McLaughlin as Acting Secretary of Labor) promulgated 16 January, 1939, (attached as Exhibit F to our Complaint) had not been in effect on 2 March, 1939, or if this Court had granted the Restraining Order which Plaintiffs had originally requested, my Company would have submitted a bid to Defendant Swanson, as Secretary of the Navy, on 2 March, 1939, on Schedule 5681 for approximately 7375 tons of Plates, Sheets
298 and Strip (as set forth in Paragraph 58 of our Complaint). But in view of all the circumstances attending that bidding, my Company did not bid.

3. I am advised that when the said bids were opened on 2 March, 1939, the Carnegie-Illinois Steel Company (a large integrated steel producer in the Pittsburgh area) submitted the lowest of only three bids on the black (or non galvanized) plates. The bid which my Company had prepared and would have been submitted was actually lower than what I am advised was the bid of the Carnegie-Illinois Steel Company. My Company was prevented from submitting this lower bid on account of said Determination and the circumstances prevailing at that time.

4. My Company currently receives invitations to bid on iron and steel products which it produces from many governmental agencies. It is now in receipt of an invitation

from the Purchasing Officer of The Panama Canal dated 1 March, 1939, Schedule No. 3433, for steel plates in an amount which will subject the bid and the contract awarded thereon to the provisions of the Walsh-Healey Act. The bids are to be opened at 10:30 A. M. on 15 March, 1939. My Company desires to submit a bid on this invitation and if the said Determination were revoked or if its effective date were postponed until after 15 March, 1939, or if this Court should grant the relief necessary to permit my Company to bid, it will submit such a bid.

5. I am advised that within the near future other agencies of the government will issue invitations to bid on iron and steel products and my Company will bid on all such invitations for products it produces, if the said Determination is revoked or if its effective date is postponed, or if this Court grants the relief necessary to permit my Company to submit such a bid.

6. Further Deponent sayeth nothing.

HENRY S. EVANS

Signed and sworn to this 4th day of March, A. D. 1939.

HELEN M. MILLER
(Seal) *Notary Public*

Commission expires March 2, 1941

EDWARD J ENNIS
Attorney for Defendants

GARDNER, MORRISON & ROGERS
Attorneys for Plaintiffs

299 Filed March 7, 1939.

Affidavit of John W. Logan

COMMONWEALTH OF PENNSYLVANIA
County of Philadelphia ss.

John W. Logan, being duly sworn upon his oath deposes and says:

I am the ~~Secretary and~~ Treasurer of Alan Wood Steel Company (hereinafter called the "Company"), one of the plaintiffs in the above entitled action. The Company is

engaged in the production and sale of certain products of the iron and steel industry.

Invitations to bid were issued on a proposed contract Schedule No. 5681, by the Bureau of Supplies and Accounts of the Department of the Navy for approximately 7375 tons of steel plates, sheets and strip. The bids on said invitations were opened on March 2, 1929. The Company desired to bid on approximately 7000 tons of such iron and steel products and would have bid thereon if the relief of the character prayed for in the complaint had been granted. It did not bid thereon for the reason that said relief was not granted.

Invitations to bid have been issued on a proposed contract, Schedule No. 7147, by the Mare Island Navy Yard of San Francisco, California, for a quantity of sheets, the sales price of which would exceed $10,000. The bids on said invitations are to be opened on March 6, 1939.
300 The Company would bid on such sheets or a portion thereof if the relief of the character prayed for in the complaint had been granted.

The Company is continuing to bid on invitations to bid issued by agencies of the United States and covering products manufactured and sold by the Company where the amount involved is less than $10,000.

Your Deponent was advised by officials of the Navy Department during the past week that invitations to bid would be issued in the near future by the Navy Department on proposed contracts covering products of the class and character manufactured and sold by the Company and if this be true the Company is desirous of bidding on such contracts if the relief of the character prayed for in the complaint is granted and the determination of the Secretary of Labor with respect to the minimum wage rates in the iron and steel industry is revoked or rendered void.

On information and belief your Deponent avers that the prevailing minimum wage rates for industries within a radius of ten (10) miles of the plants of the Company are as follows:

Textile Industry	55.2¢	per hour
Cement Industry	57¢	" "
Rubber Industry	54.5¢	" "

JOHN W. LOGAN

Sworn to and subscribed before me this 4th day of March, A. D. 1939.

IDA H. OETTER
Notary Public

(Seal)

My commission expires March 9 1939

Service of the above affidavit is acknowledged March 7, 1939.

GARDNER, MORRISON & ROGERS
Attorneys for plaintiffs.

EDWARD J ENNIS
Attorney for Defendants

301 Filed March 8, 1939.

Affidavit of Fred W. Morrison

Fred W. Morrison, being duly sworn, deposes and says: I am of counsel for the plaintiffs in this action and make this affidavit in reply to that of M. L. Ring, verified the 6th day of March 1939 and made in opposition to the motion to preliminary injunction herein. I have read said affidavit of M. L. Ring and know the contents thereof. In that affidavit he states with respect to the opening of bids and the awarding of contracts pursuant to Navy schedule 5681 that bids for certain items in said schedule were filed by three bidders and that for certain other items in said schedule bids were filed by eight bidders. I am informed and verily believe my information to be correct that with respect to the items under said schedule on which but three bids were received the materials to be furnished under such items consisted of so-called black or ungalvanized plates and that the materials to be furnished under the items on which eight bids were received consisted of galvanized plates. I am also informed and verily believe my information to be true that the Public Contracts Division of the Labor Department has made a ruling to the effect that the furnishing of galvanized plates does not come under the determination which is the subject of this action.

302 I am also informed and verily believe my information to be true that the items under such said schedule calling for black plates far exceeded in value the items

calling for galvanized plates in that the estimated value of the contracts for black plates awarded under said schedule totaled some $350,000 while the estimated value of the contracts awarded for the items for galvanized plates totaled some $105,300.

FRED W. MORRISON

Subscribed and sworn to before me this 8th day of March, 1939.

EMMA NEAL McQUEEN
Notary Public

(Seal)

My Commission Expires Oct. 15, 1941

303 Filed March 9, 1939

Affidavit of Darwin S. Wolcott.

Darwin S. Wolcott, being duly sworn, upon his oath deposes and says:

I am Vice President of Lukens Steel Company hereinafter called the Company, one of the plaintiffs in the above entitled action. The Company is engaged in the production and sale of certain products of the iron and steel industry.

Invitations to bid were issued on a proposed contract, Schedule 5681, by the Bureau of Supplies and Accounts of the Department of the Navy for approximately 7375 tons of steel plates, sheets and strips. The bids on said invitation were opened on March 2nd, 1939. The Company desired to bid on approximately 7000 tons of such iron and steel products and would have bid thereon if the character of relief prayed for in the complaint had been granted. The Company had made up and prepared a bid and was ready and prepared to submit and file the same in due course but was advised by its counsel not to do so for and by reason of the matters and things set forth in said
304 complaint. It did not bid thereon because of the fact that the relief sought in said complaint had not been granted at the time that it was necessary to file said bid.

The Company is continuing to bid on invitations to bid by agencies of the United States covering products manufactured and sold by the Company where the amount involved is less than $10,000.

Your deponent has been advised during the past week that invitations to bid would be issued in the near future by the Navy Department on proposed contracts covering products of the class and character manufactured and sold by the Company. If this be true the Company is desirous of bidding on such contracts if the relief of the character prayed for in the complaint is granted and the determination of the Secretary of Labor with respect to the minimum wage rates in the iron and steel industry is revoked or rendered void.

On information and belief your deponent avers that the prevailing minimum wage rates for industries within a radius of thirty miles of the plants of the Company are as follows:

Coatesville, Penna:

Pennsylvania Railroad	45¢ per hour First Year 46¢ per hour Second Year 47¢ per hour Third Year 48¢ per hour Fourth Year
Philadelphia Electric Co.	45¢ to 55¢ (average 50¢) per hour.
City of Coatesville	48¢ per hour.
P. W. A. High School Project	50¢ per hour.
Coatesville Scrap Iron Co.	40¢ per hour.
305 Riebman & Co., Scrap Iron	40¢ per hour
Coatesville Plate Washer Co.	50¢ per hour
Lukens Steel Company	56½¢ per hour

Lenape Hydraulic & Forging Co., Lenape, Penna. ..... 50¢ per hour
Downington Iron Works, Downington, Penna. ..... 53¢ per hour
Lancaster Iron Works, Lancaster, Penna. ..... 45¢ per hour

DARWIN S. WOLCOTT,

Sworn to and subscribed before me this 8th day of March, 1939.

ARTHUR J. PURSSELL
(Seal) *Notary Public*

My commission expires Jany. 18, 1943.

GARDNER MORRISON & ROGERS,
Attys for Plaintiffs

306 Filed March 13, 1939.

Affidavit of James A Downey.

STATE OF MARYLAND
City of Baltimore ss:

James A. Downey, being duly sworn, deposes and says—

"I am the President of The Eastern Rolling Mill Company, hereinafter called the "Company", which is a Maryland corporation.

The Company, which regularly receives invitations to bid from the U. S. Navy Department, has recently received an invitation to bid on a proposed contract, schedule No. 5748, by the Bureau of Supplies and Accounts of the Department of the Navy, for approximately twenty tons of steel, corrosion-resisting sheet. The company desires to bid on this proposed contract for such corrosion-resisting sheet. The bids on said invitation are to be opened at 10 A. M. on Tuesday, March 14, 1939. Under the terms of the invitation to bid, the determination dated January 16, 1939, of Charles V. McLaughlin, as acting Secretary of Labor, in the Matter of the Determination of Prevailing Minimum Wages in the Iron and Steel Industry has been called to the attention of all bidders and all bidders must agree to pay the minimum wages specified therein. The Company will not bid on such contract if such determination is permitted to be effective and apply to such contract. The Company, however, desires and intends to bid on such contract provided that the relief asked for in the motion for a preliminary injunction in this matter is granted as prayed and no stipulation with respect to minimum wages is applicable to any bid on or to the performance of this contract.

JAMES A. DOWNEY

SUBSCRIBED and sworn to before me this 11th day of March, 1939.

ELSIE E. SCHUSTER
[Notarial Seal] *Notary Public.*

307 Filed March 13, 1939

Affidavit of John W. Logan

COMMONWEALTH OF PENNSYLVANIA
County of Philadelphia ss.

John W. Logan, being duly sworn upon his oath deposes and says:

I am the Secretary and Treasurer of Alan Wood Steel Company (hereinafter called the "Company"), one of the plaintiffs in the above entitled action. The Company is engaged in the production and sale of certain products of the iron and steel industry.

Invitations to bid were issued on a proposed contract 33119-A Schedule 1, by the Reclamation Bureau at Denver of the Department of the Interior for a quantity of steel plates. The bids on said invitations were opened on February 6, 1939. The Company bid on a portion of such steel plates.

On or about March 6, 1939 the Company received the following telegram from the aforesaid Reclamation Bureau:

"REY OUR BID UNDER INVITATION 33119-A SCHEDULE ONE ADVISE IMMEDIATELY IF YOU WILL ACCEPT DEPARTMENT OF LABOR WAGE DETERMINATION FOR IRON AND STEEL INDUSTRY DATED JANUARY 16, 1939 AND EFFECTIVE MARCH 1, 1939 AS A PART OF CONTRACT IF AWARDED TO YOU.

RECLAMATION BUREAU."

In reply thereto the Company sent the following telegram to said Reclamation Bureau:

308 "RECLAMATION BUREAU
DENVER COLO

RETEL SIXTH OUR QUOTATION BID FEBRUARY SIXTH PREDICATED LABOR RATES IN EFFECT AT THAT TIME. REGRET ARE NOT WILLING ACCEPT DEPARTMENT OF LABOR WAGE DETERMINATION AS WE ARE PARTICIPATING IN ACTION NOW PENDING IN COURT SEEKING PERMANENT INJUNCTION AGAINST THIS DETERMINATION.

ALAN WOOD STEEL CO."

JOHN W. LOGAN

Sworn to and subscribed before me this 11 day of March, 1939.

HENRY GROSS

(Seal) *Notary Public*

My commission expires Jany. 18, 1941

309 Filed March 13, 1939.

Affidavit of John W. Logan

COMMONWEALTH OF PENNSYLVANIA
County of Philadelphia ss.

John W. Logan, being duly sworn upon his oath deposes and says:

I am the Secretary and Treasurer of Alan Wood Steel Company (hereinafter called the "Company"), one of the plaintiffs in the above entitled action. The Company is engaged in the production and sale of certain products of the iron and steel industry.

Invitations to bid were issued on a proposed contract Schedule No. 3433 by the General Purchasing Officer of the Panama Canal dated March 1, 1939, for a quantity of materials including approximately 500 tons of steel plates, and the contract which will be awarded thereon will be subject to the provisions of the Public Contracts Act.

Subsequent to the issuance of said invitations to bid, the General Purchasing Officer of the Panama Canal notified the Company that any contracts awarded pursuant to said invitations to bid will be subject to the determination by

the Secretary of Labor of the prevailing minimum wages in the iron and steel industry.

The bids on said invitations will be opened on March 15, 1939.

310 The Company desires to bid on approximately 500 tons of such steel plates and will bid thereon if the relief of the character prayed for in the Complaint is granted and the determination of the Secretary of Labor with respect to the minimum wage rates in the iron and steel industry is revoked or rendered void.

The Company will not however bid on such contract so long as said determination continues in force and effect.

JOHN W. LOGAN

Sworn to and subscribed before me this 11 day of March, 1939.

HENRY GROSS
Notary Public

(Seal)

My commission expires Jany. 18, 1941

311 Filed March 14, 1939.

Order Granting Leave to Amend Complaint

Upon motion made in open court by counsel for the plaintiffs for leave to amend the complaint herein, and it appearing to this Court that justice requires that such leave be given,

IT IS HEREBY ORDERED:

1. That plaintiffs have leave to amend the complaint herein in the manner set forth in Schedule A annexed hereto.

2. That the complaint herein shall be deemed to be so amended forthwith.

3. The plaintiffs shall serve a copy of this order upon counsel for the defendants herein not later than March 14, 1939.

JENNINGS BAILEY
Justice.

Dated, March 14, 1939.

312 *Schedule A*

In the District Court of the United States
for the District of Columbia

CIVIL ACTION FILE No. 1839

LUCKENS STEEL COMPANY, ET AL., *Plaintiffs,*

—against—

FRANCES PERKINS, ET AL., *Defendants.*

Amendments to Complaint for Injunction and Declaratory Judgment

To the Honorable, the Judges of the District Court of the United States for the District of Columbia:

The Complaint for Injunction and Declaratory Judgment filed herein on February 25, 1939, is hereby amended as follows:

1. The second sub-paragraph of paragraph 3 of said Complaint is hereby amended to read as follows:

"At its above-mentioned plant Lukens employs at the present time approximately 2,000 wage earners, of whom approximately 125 are common laborers. Such common laborers are paid at the rate of 56½ cents an hour. Substantially all the other wage earners employed by Lukens at such plant are paid at rates of pay in excess of such rate of pay for common labor."

2. The second sub-paragraph of paragraph 9 of said Complaint is hereby amended to read as follows:

"At its above-mentioned plant Atlantic employs at the present time approximately 150 wage earners, of whom approximately 15 are common laborers, paid at the rate of 52½ cents an hour, which is the base rate of pay of Atlantic for common labor. Substantially all the other wage earners employed by Atlantic at such plant are paid at rates of pay in excess of such base rate of pay for common labor, which rates are generally computed by adding various differentials to such base rate."

313 3. The following paragraph is inserted after paragraph 10 and preceding paragraph 11 of said Complaint:

"10A. The respective plaintiffs have generally realized profits from the sale by them to agencies of the United States of iron and steel products as aforesaid."

4. Paragraph 51 of said Complaint is hereby amended to read as follows:

"51. For the purposes of the Determination, the defendant McLaughlin treated the common labor base rates of the various members of the industry which had submitted wage data to the Board as the minimum wages paid by such members.

"Upon information and belief, the defendant McLaughlin in making the Determination accepted, approved and adopted the findings of fact (including the findings in respect of wage data), as distinguished from the inferences and conclusions therefrom (with some of which said defendant disagreed), set forth in the Report.

"62½ cents per hour was not at the date of the wage data set forth in the Record and the Report or at the date of the Determination or at any time subsequent thereto, and is not now, the prevailing common labor base rate, or the prevailing minimum wage, in the Iron and Steel Industry, in or in the immediate vicinity of any city, county, village or other State civil subdivision in which any of the plants of the plaintiffs are located, or in any small geographical area surrounding any such plant or city, county, village or other State civil subdivision, but, as shown herein and as appears from the findings of fact in the Report, such prevailing common labor base rates, and prevailing minimum wages, were at all such times and are now substantially lower than 62½ cents per hour.

"Plaintiffs are informed and believe, and therefore aver, that, as appears from the face of the Determination and the Report setting forth the wage data on which the Determination was based, the Determination constitutes an attempt on the part of the defendants Perkins and McLaughlin, purporting to act in their respective official capacities above set forth and under the guise and pretense of determining the minimum wages actually prevailing in the respective localities in which the plants of plaintiffs and other manufacturers of products of the Iron and Steel Industry are located, but, in fact, acting completely beyond any authority conferred upon them by law, to raise and fix the wage rates to be paid at such plants."

314 5. Paragraph 52 of said Complaint, through and including the second sentence of sub-paragraph (b) thereof, is hereby amended to read as follows:

"52. Plaintiffs are informed and believe, and, therefore, aver, that even if, as erroneously concluded by the defendant McLaughlin in the Determination, the Act conferred authority upon the Secretary of Labor in the light of relevant economic factors to determine that any geographic area, however large, was a 'locality' for the purpose of determining the prevailing minimum wages paid in the Iron and Steel Industry therein, the conclusion reached in the Determination that the States of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine and that portion of the State of West Virginia comprised within the Counties of Hancock, Brooke, Ohio, Marshall, Harrison and Monongalia and the District of Columbia comprise a single 'locality' for such purpose is wholly arbitrary and capricious and without warrant in law for the following reasons, among others:

"(a) The only so-called economic factor which is referred to in the Determination in that regard is the alleged fact that a single market area is predominantly served by the plants in the Iron and Steel Industry located in the above-mentioned area. On information and belief, such alleged fact (the existence of which plaintiffs deny) was wholly irrelevant to the determination of prevailing minimum wages in a locality in which iron and steel products are manufactured; and in giving controlling significance thereto the defendant McLaughlin completely misconstrued the Act and, in effect, converted it into one authorizing the fixing of wages that are to prevail for persons employed by manufacturers (wherever located) who market their products in the same area;

"(b) The defendant McLaughlin in the Determination completely and erroneously ignored the facts set forth in the Report and the Record which showed the existence of well-defined and long-established wage differentials existing among various districts in the so-called 'locality' above mentioned. Such facts, which were undisputed, were to the effect that, and plaintiffs allege that, there are in the Iron and Steel Industry well recognized and long-existing wage

differentials between the plants in the industry which are located in the Western portion (hereinafter sometimes called the Western District) of the so-called 'locality' referred to in sub-paragraph (a), above and those plants which were included by said defendant in said 'locality' but which are also located in what are known in the industry as the 'Eastern District', the 'Buffalo District' and the 'Johnstown District'."

315 6. That portion of paragraph 55 of said Complaint to the commencement of sub-paragraph (a) thereof is hereby amended to read as follows:

"55. The plaintiffs are informed and believe, and, therefore, aver, that the purported determination referred to in the foregoing paragraph 44 hereof is arbitrary and capricious and without warrant in law for the reason that it was made by the defendant McLaughlin without there having been accorded to the plaintiffs the fair hearing which the Secretary of Labor was required by the Act, and particularly Section 5 thereof, to give to the plaintiffs prior to the making of any determination of the prevailing minimum wages in the Iron and Steel Industry in the respective localities in which the plants of the plaintiffs are located, in that:"

7. The last sub-paragraph of paragraph 58 of said Complaint is hereby amended to read as follows:

"Plaintiffs Lukens, Alan Wood and Central desire to, and, if the Determination shall not become effective, will, submit bids on the above-mentioned Schedule 5681; and some or all of the plaintiffs desire to, and, if the Determination shall not become effective, will, submit bids on some or all of the other schedules above set forth; and, in each such instance, plaintiffs intend to submit bids at prices which at the time they shall deem high enough to enable them to realize profits on any contracts that may be awarded to them."

8. Paragraph 60 of said Complaint is hereby amended to read as follows:

"60. Appropriations which are among the largest, if not the largest in the nation's history for the purchase by the Department of the Navy, the War Department, the Department of the Treasury, the Department of the Interior and the Post Office Department of products of the Iron and

Steel Industry (as defined in the Determination) have been made within the past year and, on information and belief, will be made within the immediate future. Large sums out of the appropriations heretofore made for such purchases have not yet been expended. On information and belief, invitations to bid on numerous large and important contracts for the purposes hereinabove referred to, as well as for the purchase by other agencies of the United States of products of the Iron and Steel Industry (as so defined), will be issued, and such contracts will be awarded, within the immediate future.

"Plaintiffs are desirous of bidding on such con-
316 tracts, and the respective plaintiffs intend, if the Determination shall not become effective, to bid on various of such contracts as shall pertain to products manufactured and sold by them, respectively, at prices which at the time they shall deem high enough to enable them to realize profits on any such contracts that may be awarded to them."

O. MAX GARDNER,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

ROBERTS B. THOMAS,
Office & P. O. Address:
101 Park Avenue,
New York, N. Y.

GARDNER, MORRISON & ROGERS,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

WEBSTER & GARSIDE,
Office & P. O. Address:
15 Broad Street,
New York, N. Y.

HAUSE, EVANS, STOREY & LICK,
Office & P. O. Address:
Telegraph Building,
Harrisburg, Pa.

COOK & MARKELL,
Office & P. O. Address:
First National Bank Building,
Baltimore, Maryland.

GEORGE WALTER WITNEY,
Office & P. O. Address:
Finance Building,
Philadelphia, Pa.

FREDERICK H. KNIGHT,
MORGAN, LEWIS & BOCKIUS,
Office & P. O. Address:
2107 Fidelity-Philadelphia
Trust Building,
Philadelphia, Pa.

Attorneys for Plaintiffs.

317 *District of Columbia ss:*

Roberts B. Thomas, being first duly sworn, according to law, upon oath deposes and says:

I am a citizen of the United States, over 21 years of age, and a resident of the County of Nassau, State of New York, and am an attorney duly admitted to practice in all the courts of the State of New York, the Supreme Court of the United States and the United States Court of Appeals for the District of Columbia. I am attorney for the plaintiffs named in the Complaint referred to in the foregoing Amendments to Complaint for Injunction and Declaratory Judgment. All said plaintiffs are corporations and are absent from the District of Columbia. I have read said Amendments and verily believe the facts stated therein to be true.

(Signed) ROBERTS B. THOMAS

Subscribed and sworn to before me this 9th day of March 1939

(Signed) EMMA NEAL McQUEEN
Notary Public, D. C.

My Commission Expires Oct. 15, 1941
(Notarial Seal)

318 Filed March 14, 1939

Amendments to Complaint for Injunction and Declaratory Judgment

To the Honorable, the Judges of the District Court of the United States for the District of Columbia:

The Complaint for Injunction and Declaratory Judgment filed herein on February 25, 1939, is hereby amended as follows:

1. The second sub-paragraph of paragraph 3 of said Complaint is hereby amended to read as follows:

"At its above-mentioned plant Lukens employs at the present time approximately 2,000 wage earners, of whom approximately 125 are common laborers. Such common laborers are paid at the rate of 56-½ cents an hour. Substantially all the other wage earners employed by Lukens at such plant are paid at rates of pay in excess of such rate of pay for common labor."

2. The second sub-paragraph of paragraph 9 of said Complaint is hereby amended to read as follows:

"At its above-mentioned plant Atlantic employs at the present time approximately 150 wage earners, of whom approximately 15 are common laborers, paid at the rate of 52-½ cents an hour, which is the base rate of pay of Atlantic for common labor. Substantially all the other wage earners employed by Atlantic at such plant are paid at rates of pay in excess of such base rate of pay for common labor, which rates are generally computed by adding various differentials to such base rate."

319 3. The following paragraph is inserted after paragraph 10 and preceding paragraph 11 of said Complaint:

"10A. The respective plaintiffs have generally realized profits from the sale by them to agencies of the United States of iron and steel products as aforesaid."

4. Paragraph 51 of said Complaint is hereby amended to read as follows:

"551. For the purposes of the Determination, the defendant McLaughlin treated the common labor base rates of the various members of the industry which had submitted

wage data to the Board as the minimum wages paid by such members.

"Upon information and belief, the defendant McLaughlin in making the Determination accepted, approved and adopted the findings of fact (including the findings in respect of wage data), as distinguished from the inferences and conclusions therefrom (with some of which said defendant disagreed), set forth in the Report.

"62-½ cents per hour was not at the date of the wage data set forth in the Record and the Report or at the date of the Determination or at any time subsequent thereto, and is not now, the prevailing common labor base rate, or the prevailing minimum wage, in the Iron and Steel Industry, in or in the immediate vicinity of any city, county, village or other State civil subdivision in which any of the plants of the plaintiffs are located, or in any small geographical area surrounding any such plant or city, county, village or other State civil subdivision, but, as shown herein and as appears from the findings of fact in the Report, such prevailing common labor base rates, and prevailing minimum wages, were at all such times and are now substantially lower than 62-½ cents per hour.

"Plaintiffs are informed and believe, and therefore aver, that, as appears from the face of the Determination and the Report setting forth the wage data on which the Determination was based, the Determination constitutes an attempt on the part of the Defendants Perkins and McLaughlin, purporting to the act in their respective official capacities above set forth and under the guise and pretense of determining the minimum wages actually prevailing in the respective localities in which the plants of plaintiffs and other manufacturers of products of the Iron and Steel Industry are located, but, in fact, acting completely beyond any authority conferred upon them by law, to raise and fix the wage rates to be paid at such plants."

320 5. Paragraph 52 of said Complaint, through and including the second sentence of sub-paragraph (b) thereof, is hereby amended to read as follows:

"52. Plaintiffs are informed and believe, and, therefore aver, that even if, as erroneously concluded by the defendant McLaughlin in the Determination, the Act conferred

authority upon the Secretary of Labor in the light of relevant economic factors to determine that any geographic area, however large, was a 'locality' for the purpose of determining the prevailing minimum wages paid in the Iron and Steel Industry therein, the conclusion reached in the Determination that the States of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine and that portion of the State of West Virginia comprised within the Counties of Hancock, Brooke, Ohio, Marshall, Harrison and Monongalia and the District of Columbia comprise a single 'locality' for such purpose is wholly arbitrary and capricious and without warrant in law for the following reasons, among others:

"(a) The only so-called economic factor which is referred to in the Determination in that regard is the alleged fact that a single market area is predominantly served by the plants in the Iron and Steel Industry located in the above-mentioned area. On information and belief, such alleged fact (the existence of which plaintiffs deny) was wholly irrelevant to the determination of prevailing minimum wages in a locality in which iron and steel products are manufactured; and in giving controlling significance thereto the defendant McLaughlin completely misconstrued the Act and, in effect, converted it into one authorizing the fixing of wages that are to prevail for persons employed by manufacturers (wherever located) who market their products in the same area;

"(b) The defendant McLaughlin in the Determination completely and erroneously ignored the facts set forth in the Report and the Record which showed the existence of well-defined and long-established wage differentials existing among various districts in the so-called 'locality' above mentioned. Such facts, which were undisputed, were to the effect that, and plaintiffs allege that, there are in the Iron and Steel Industry well recognized and long-existing wage differentials between the plants in the industry which are located in the Western portion (hereinafter sometimes called the Western District) of the so-called 'locality' referred to in sub-paragraph (a) above and those plants which were included by said defendant in said 'locality' but which are also located in what are known in the industry as the

'Eastern District', the 'Buffalo District' and the
321 'Johnstown District'."

6. That portion of paragraph 55 of said Complaint to the commencement of sub-paragraph (a) thereof is hereby amended to read as follows:

"55. The plaintiffs are informed and believe, and, therefore, aver, that the purported determination referred to in the foregoing paragraph 44 hereof is arbitrary and capricious and without warrant in law for the reason that it was made by the defendant McLaughlin without there having been accorded to the plaintiffs the fair hearing which the Secretary of Labor was required by the Act, and particularly Section 5 thereof, to give to the plaintiffs prior to the making of any determination of the prevailing minimum wages in the Iron and Steel Industry in the respective localities in which the plants of the plaintiffs are located, in that;"

7. The last sub-paragraph of paragraph 58 of said Complaint is hereby amended to read as follows:

"Plaintiffs Lukens, Alan Wood and Central desire to, and, if the Determination shall not become effective, will, submit bids on the above-mentioned Schedule 5681; and some or all of the plaintiffs desire to, and, if the Determination shall not become effective, will, submit bids on some or all of the other schedules above set forth; and, in each such instance, plaintiffs intend to submit bids at prices which at the time they shall deem high enough to enable them to realize profits on any contracts that may be awarded to them."

8. Paragraph 60 of said Complaint is hereby amended to read as follows:

"60. Appropriations which are among the largest, if not the largest in the nation's history for the purchase by the Department of the Navy, the War Department, the Department of the Treasury, the Department of the Interior and the Post Office Department of products of the Iron and Steel Industry (as defined in the Determination) have been made within the past year and, on information and belief, will be made within the immediate future. Large sums out of the appropriations heretofore made for such purchases have not yet been expended. On information and belief, invitations to bid on numerous large and important contracts

for the purposes hereinabove referred to, as well as for the purchase by other agencies of the United States of products of the Iron and Steel Industry (as so defined), will be issued, and such contracts will be awarded, within the immediate future.

"Plaintiffs are desirous of bidding on such con-
322 tracts, and the respective plaintiffs intend, if the Determination shall not become effective, to bid on various of such contracts as shall pertain to products manufactured and sold by them, respectively, at prices which at the time they shall deem high enough to enable them to realize profits on any such contracts that may be awarded to them."

O. MAX GARDNER,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

ROBERTS B. THOMAS,
Office & P. O. Address:
101 Park Avenue,
New York, N. Y.

GARDNER, MORRISON & ROGERS,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

WEBSTER & GARSIDE,
Office & P. O. Address:
15 Broad Street,
New York, N. Y.

HAUSE, EVANS, STOREY & LICK,
Office & P. O. Address:
Telegraph Building,
Harrisburg, Pa.

COOK & MARKELL,
Office & P. O. Address:
First National Bank Building,
Baltimore, Maryland.

GEORGE WALTER WITNEY,
Office & P. O. Address:
Finance Building,
Philadelphia, Pa.

FREDERICK H. KNIGHT,
MORGAN, LEWIS & BOCKIUS,
Office & P. O. Address:
2107 Fidelity-Philadelphia
Trust Building,
Philadelphia, Pa.

Attorneys for Plaintiffs.

323 *District of Columbia, ss:*

Roberts B. Thomas, being first duly sworn, according to law, upon oath deposes and says:

I am a citizen of the United States, over 21 years of age, and a resident of the County of Nassau, State of New York, and am an attorney duly admitted to practice in all the courts of the State of New York, the Supreme Court of the United States and the United States Court of Appeals for the District of Columbia. I am attorney for the plaintiffs named in the Complaint referred to in the foregoing Amendments to Complaint for Injunction and Declaratory Judgment. All said plaintiffs are corporations and are absent from the District of Columbia. I have read said Amendments and verily believe the facts stated therein to be true.

ROBERTS B. THOMAS

Subscribed and sworn to before me this 9th day of March, 1939

EMMA NEAL McQUEEN

(Notarial Seal) *Notary Public, D. C.*

My Commission Expires Oct. 15, 1941

324 Filed March 14, 1939

Order Making of Record Extensions Of Temporary Restraining Order

The Court hereby makes of record the facts that the temporary restraining order issued by this Court and filed

February 28, 1939, was, during the argument of the motion of the defendants to dismiss the Complaint, by the Court from time to time extended to and including the entry of an order disposing of such motion, and, upon representation of counsel for the defendants that said order as so extended would be observed by the defendants without its being reduced to writing and formally served on the defendants, such reduction to writing and formal service were dispensed with.

JENNINGS BAILEY
Justice.

Dated, March 14, 1939.

325 Filed March 14, 1939

Order Denying Motion, and Dismissing Petition, Of Steel Workers Organizing Committee for Leave to Intervene

This cause came on to be further heard at this term upon the motion and the petition of Steel Workers Organizing Committee for leave to intervene in the above-entitled cause and was argued by counsel; and thereupon, upon consideration thereof, it is this 14th day of March, 1939,

ADJUDGED, ORDERED and DECREED that the motion of Steel Workers Organizing Committee for leave to intervene in the above-entitled cause be, and it hereby is, denied, and the petition of Steel Workers Organizing Committee for leave to intervene in the above-entitled cause be, and it hereby is, dismissed.

JENNINGS BAILEY
Justice.

326 Filed March 14, 1939

Judgment Dismissing Complaint, as Amended

This cause came on further to be heard at this term upon the motion of defendants to dismiss the Complaint for Injunction and Declaratory Judgment and was argued by counsel; and thereupon, upon consideration thereof, it is this 14th day of March, 1939,

ADJUDGED, ORDERED AND DECREED as follows:

1. The temporary restraining order heretofore issued herein be, and it hereby is, dissolved;

2. The motion to dismiss the Complaint for Injunction and Declaratory Judgment be, and it hereby is, granted; and

3. The Complaint for Injunction and Declaratory Judgment, as amended, be, and it hereby is, dismissed, with costs against the plaintiffs.

JENNINGS BAILEY
Justice.

Exception of the plaintiffs is hereby noted to the entry of paragraphs 1, 2, and 3 of the above Judgment and to so much thereof as refuses any of the relief herein prayed by the plaintiffs, and to the refusal of the Court to rule on and to grant plaintiffs' motion for a preliminary injunction on the ground that dismissal of the complaint, as amended, disposed of this action in this Court, and to the denial of plaintiffs' application for a stay and injunction pending appeal; and the plaintiffs, by their attorneys, in open Court petition for and note and notice an appeal from the above order to the United States Court of Appeals for the
327 District of Columbia on this 14th day of March, 1939, which appeal is hereby granted and noted, whereupon the maximum undertaking for costs is hereby fixed at Two hundred and fifty Dollars ($250.00) with leave to deposit the sum of One hundred Dollars ($100.00) with the Clerk of the Court in lieu thereof.

JENNINGS BAILEY
Justice.

328 Filed March 14, 1939

Notice of Appeal.

Notice is hereby given this 14th day of March, 1939, that Lukens Steel Company, Alan Wood Steel Company, South Chester Tube Company, Central Iron & Steel Company, Harrisburg Steel Corporation, The Eastern Rolling Mill Company and The Atlantic Wire Company hereby appeal to the United States Court of Appeals for the District of

lumbia from the final judgment of this Court entered in s action on the 14th day of March, 1939, in favor of de- dants Frances Perkins, individually and as Secretary of bor of the United States, Charles V. McLaughlin, in- idually and as Assistant Secretary of Labor of the ited States, L. Metcalfe Walling, individually and as ministrator of the Division of Public Contracts of the partment of Labor of the United States, Henry Morgen- u, Jr., individually and as Secretary of the Treasury of United States, Christian Joy Peoples, individually and as Director of the Procurement Division of the De- partment of the Treasury of the United States, Claude Augustus Swanson, individually and as Sec- ary of the Navy of the United States, Harry Hines oodring, individually and as Secretary of War of the ited States, Harold L. Ickes, individually and as Secre- y of the Interior of the United States, and James A. rley, individually and as Postmaster General of the ited States, and from each and every part thereof, in- ding paragraphs 1, 2 and 3 thereof and the refusal of s Court to rule on and to grant plaintiffs' motion for a eliminary injunction.

O. MAX GARDNER,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

ROBERTS B. THOMAS,
Office & P. O. Address:
101 Park Avenue,
New York, N. Y.

GARDNER, MORRISON & ROGERS,
Office & P. O. Address:
Woodward Building,
Washington, D. C.

WEBSTER & GARSIDE,
Office & P. O. Address:
15 Broad Street,
New York, N. Y.

HAUSE, EVANS, STOREY & LICK,
Office & P. O. Address:
Telegraph Building
Harrisburg, Pa.

COOK & MARKELL,
Office & P. O. Address:
First National Bank Building,
Baltimore, Maryland.

GEORGE WALTER WITNEY,
Office & P. O. Address:
Finance Building,
Philadelphia, Pa.

FREDERICK H. KNIGHT,
MORGAN, LEWIS & BOCKIUS,
Office & P. O. Address:
2107 Fidelity-Philadelphia
Trust Building,
Philadelphia, Pa.

Attorneys for Plaintiffs

330 *Memorandum.*

MARCH 14, 1939

$100 deposited by Gardiner, Morrison & Rogers for plaintiffs in lieu of bond on appeal.

---

331 Filed March 15, 1939.

Assignment of Errors

Now come the plaintiffs, Lukens Steel Company, Alan Wood Steel Company, South Chester Tube Company, Central Iron & Steel Company, Harrisburg Steel Corporation, The Eastern Rolling Mill Company and The Atlantic Wire Company, by their attorneys, and say that in the record and in the judgment entered in the above-entitled cause on March 14, 1939, there is error in the following respects:

I. The Court erred in overruling, denying and failing and refusing to grant plaintiffs' application for a temporary restraining order and in not issuing and extending a temporary restraining order, in the form and manner and to the extent as prayed.

II. The Court erred in issuing the temporary restraining order, as from time to time extended, limited in the form and manner and to the extent provided for in said order

III. The Court erred in dissolving the temporary
332 restraining order theretofore issued and extended by it.

IV. The Court erred in failing and refusing to rule on plaintiffs' motion and application for preliminary injunction, as provided in the order of the Court filed March 3, 1939.

V. The Court erred in failing and refusing to rule on and to grant plaintiffs' motion and application for a preliminary injunction.

VI. The Court erred in failing and refusing to grant to plaintiffs, and in not issuing, a preliminary injunction as prayed.

VII. The Court erred in failing and refusing to grant to plaintiffs, and in not issuing, a preliminary injunction, in substance (a) restraining and enjoining the defendants Perkins, McLaughlin, and Walling, individually and in their respective official capacities, from continuing in effect, and holding o t as effective, valid or authorized by law, the purported Determination of prevailing minimum wages in the Iron and Steel Industry issued under date of January 16, 1939, by the defendant Charles V. McLaughlin, as Acting Secretary of Labor (hereinafter called the Determination), and (b) restraining and enjoining the other defendants, individually and in their respective official capacities, from giving effect to the Determination in the bidding upon, and award of, contracts for products of the Iron and Steel Industry subject to the Public Contracts Act (Act of
333 Congress approved June 30, 1936; Public—No. 846—74th Cong.; 49 Stat. 2036-2039, c. 881).

VIII. The Court erred in dismissing plaintiffs' complaint for injunction and declaratory judgment, as amended.

IX. The Court erred in granting, and in failing and refusing to deny, defendants' motion to dismiss.

X. The Court erred in failing and refusing to grant to plaintiffs, and in not issuing, a permanent injunction as prayed.

XI. The Court erred in failing and refusing to enter, and in not entering, a judgment declaring and ordering, adjudging and decreeing that the Determination is invalid and unauthorized in law.

XII. The Court erred in overruling, denying and failing and refusing to grant plaintiffs' application for a stay and injunction pending appeal.

XIII. In other respects apparent of record.

For which errors the plaintiffs, Lukens Steel Company, Alan Wood Steel Company, South Chester Tube Company, Central Iron & Steel Company, Harrisburg Steel Corporation, The Eastern Rolling Mill Company and The Atlantic Wire Company, pray that the said judgment of the District Court of the United States for the District of Columbia, dated March 14, 1939, be reversed and that the cause be remanded to said Court with directions to overrule and deny the motion to dismiss, to grant a preliminary injunction as prayed, to grant a permanent
334 injunction as prayed, to enter a declaratory judgment as prayed and for costs.

O. MAX GARDNER
ROBERTS B. THOMAS
FREDERICK H. KNIGHT
Counsel for Plaintiffs-Appellants.

Receipt of a copy of the foregoing Assignment of Errors is hereby acknowledged this 15th day of March, 1939.

EDWARD J. ENNIS
Counsel for Defendants-Appellees.

335 *Docket Entries*

Date		Proceedings
1939		Deposit for costs by—Gardiner
Feb	25	Complaint & Exhibits (7)—Affidavits (7) filed
"	"	Summons & copies (11) complaint issued
"	27	Mo. of plff. for inj "
"	"	Memo & Request of Francis E. Walter to appear and be heard amicus curiae (Leave by Bailey J. in open court)
"	28	Temporary restraining order to expire Mar 7/39 provided pltfs furnish $25,000 bond or $25,000 deposit, issued 3:28 p m Feb 28/39 Bailey, J.

"	"	Deposit of $25,000 by cashier's check of Riggs National Bank, in Registry pursuant to order of this date
"	"	Deposit for copy of order by Fred W. Morrison
"	"	Certified copy of Temp. restr. order issued to Fred W. Morrison
"		P. & A. of plff in support of restraining order & Exh
Mch.	1	Mo. of plff. for preliminary injunction & Notice
"	"	Certified copies (3) of temporary restraining order & Deposit by Gardiner
"	"	Order setting final hearing for March 7/39, Bailey, J.
"	3	Memo, Bailey, J.
"	6	Mo. to dismiss complaint, Notice & P & A —by Ennis
"	6	Mo. of Steel Workers Organizing Committee for leave to intervene & Notice
"	"	Petn of Steel Workers Organizing Committee for leave to intervene App. Lee Pressman, Joseph Kovner, A. W. Smith & S. V. Smith
"	7	Affidavit of Henry S. Evans
"	"	" " Jno. W. Logan
"	"	Points & authorities of pltfs in opposition to motion to dismiss
"	9	Affi. of Darwin S. Wolcott
"	13	Affis (3) for plff.
"	14	Order granting plffs leave to amend compt & Exh Bailey J.
"	"	Amendments to comp't & Ack
"	"	Order extending temporary restraining order etc Bailey J
"	"	Order denying mo of Steel Workers Organizing Committee for leave to intervene and dismissing petition—Bailey J
"	"	Judgment dismissing compt as amended —Bailey J. Exceptions and Appeal noted—Bond fixed at $250 or $100 deposit—Bailey J

Date	Proceedings
" "	Order discharging undertaking and directing refund of $25000 security to Gardiner, Morrison & Rogers Bailey, J.
" 14	$24,750.00 paid to Gardner, Morrison & Rogers, Attys. for Plffs. check #2797,

336

1939

Mch. 14	Clerks commission on fund
" "	Deposit for commission by Reg. check #2798
" "	Notice of plff. of appeal—Copy mailed to E. J. Ennis
" "	Deposit by Gardiner, Morrison & Rogers for plff in lieu of bond on appeal:
" "	Deposit by Gardiner, Morrison & Rogers:
" 15	Assignment of Error.
" "	Designation of Record.

337 Filed March 15, 1939.

Praecipe and Designation of Record

The Clerk of the Court will please prepare the record on appeal in the above-entitled cause and include therein the following papers and proceedings:

(1) Complaint for injunction and Declaratory Judgment, filed February 25, 1939;

(2) Motion for Preliminary Injunction, filed February 27, 1939;

(3) Affidavits in Support of Preliminary Injunction, filed February 25, 1939;

(4) Temporary Restraining Order, filed February 28, 1939;

(5) Order Setting Cause down for Final Hearing, filed March 1, 1939;

(6) Notice of Motion for Preliminary Injunction, filed March 1, 1939;

(7) Order Setting Cause down for Hearing on
338 Motion to Dismiss and on Motions as Counsel may be Advised, filed March 3, 1939;

(8) Motion of Defendants to Dismiss Complaint, filed March 6, 1939;

(9) Defendants' Notice of Motion to Dismiss Complaint, filed March 6, 1939;

(10) Motion of Steel Workers Organizing Committee for Leave to Intervene, filed March 6, 1939;

(11) Notice of Motion of Steel Workers Organizing Committee, filed March 6, 1939;

(12) Petition of Steel Workers Organizing Committee for Leave to Intervene, filed March 6, 1939;

(13) Affidavit of Henry S. Evans, filed March 7, 1939;

(14) Affidavit of John W. Logan, filed March 7, 1939;

(15) Affidavit of Fred W. Morrison, filed March 8, 1939;

(16) Affidavit of Darwin S. Wolcott, filed March 9, 1939;

(17) Affidavit of James A. Downey, filed March 13, 1939;

(18) Affidavit of John W. Logan, filed March 13, 1939;

(19) Affidavit of John W. Logan, filed March 13, 1939;

(20) Order Granting Plaintiffs Leave to Amend Complaint, filed March 14, 1939;

339 (21) Amendments to Complaint, filed March 14, 1939;

(22) Order Making of Record Extensions of Temporary Restraining Order, filed March 14, 1939;

(23) Order Denying Motion of Steel Workers Organizing Committee for Leave to Intervene and Dismissing Petition, filed March 14, 1939;

(24) Judgment Dismissing Complaint as Amended, filed March 14, 1939;

(25) Plaintiffs' Exceptions and Notations of Appeal, filed March 14, 1939;

(26) Notice of Appeal, filed March 14, 1939;

(27) Assignment of Errors, filed March 15, 1939;

(28) Docket entries; and

(29) This Praecipe and Designation of Record, filed March 15, 1939.

O. MAX GARDNER
ROBERTS B. THOMAS
FREDERICK H. KNIGHT
Counsel for Plaintiffs.

Receipt of a copy of the foregoing Praecipe and Designation of Record is hereby acknowledged this 15th day of March, 1939.

EDWARD J. ENNIS
Counsel for Defendants.

340 District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 339, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 1839, Civil Action, wherein Lukens Steel Company, a corporation, et al., are Plaintiffs and Frances Perkins, individually and as Secretary of Labor of the United States, et al., are Defendants, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 17th day of March, 1939.

C. E. STEWART,

(Seal) *Clerk.*

CLERK'S MEMORANDUM:

Motion to add the following to printed record granted March 25, 1939.

341 Endorsed: United States Court of Appeals for the District of Columbia Filed Mar 25 1939 Joseph W. Stewart, Clerk

District Court of the United States for the District of Columbia

No. 1839—Civil Action

LUKENS STEEL COMPANY, ET AL., *plaintiffs*

vs.

FRANCES PERKINS, ET AL., *defendants*

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, do hereby certify the annexed to be a true and correct copy of the original Affidavit of Edward J. Ennis, Affidavit of M. L. Ring, and Defendants' Cross-Designations of Record on Appeal

(2), as (they) appear.... of record in the Clerk's Office of said Court in the aboye-entitled cause.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 25th day of March, 1939.

CHARLES E. STEWART,
Clerk.

By LYDIA M. GARDINER
Assistant Clerk.

342 Endorsed: Filed Mar 24 1939

In the District Court of the United States for the District of Columbia

Civil Action File No. 1839

LUKENS STEEL COMPANY, A CORPORATION, ET AL., *Plaintiffs,*

v.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, ET AL., *Defendants.*

Affidavit Opposing Motion for Preliminary Injunction.

Edward J. Ennis, being duly sworn, deposes and says:

1. I am of counsel for the defendants in this action and make this affidavit in support of a request for adjournment of the plaintiffs' motion for a preliminary injunction filed February 28, 1939, served on the United States Attorney March 2, 1939, and noticed for a hearing March 7, 1939.

2. This motion is made in this action by seven corporations engaged in the production of products of the iron and steel industry to obtain an injunction and a declaratory judgment against nine officials of the Government of the United States, including the Secretary of the Treasury, the Secretary of War, the Postmaster General, the Secretary of the Navy, the Secretary of the Interior and the Secretary of Labor, to enjoin them from making effective a determination of the Secretary of Labor concerning the payment of prevailing minimum wages for persons employed in the manufacture of materials furnished under government contracts.

3. The motion for preliminary injunction is made upon voluminous papers, including the verified complaint (31

pages), exhibits A to G annexed to the complaint (over 200 pages), and seven affidavits (30 pages) and points and authorities (50 pages). The complaint and affidavits allege a great many facts including the following:

a. That numerous large and important government contracts will be awarded in the immediate future by the defendants (complaint, p. 24);

343 b. That increase of common labor base rates of pay paid by the plaintiffs, who may obtain government contracts, will increase the base rates of pay for other wage earners of the plaintiffs engaged on work not related to government contracts (complaint, pp. 25-26);

(c) That if the plaintiffs are required to pay the minimum wages determined by the Secretary of Labor there is grave danger that they will no longer be able successfully to compete for government contracts with large, fully integrated companies, and that if they do not agree to pay such minimum wages they will be in grave danger of losing a substantial source of revenue (complaint, p. 26).

4. Defendants have not had an opportunity to investigate the truth of these and many other alleged facts or to obtain and present to this Court other facts concerning the nature of the plaintiffs' business and the probability of great and immediate pecuniary damage to the plaintiffs, which are relevant upon this application for a preliminary injunction.

5. The Points and Authorities of the plaintiffs on this motion raise many questions of law which defendants have not had an opportunity to consider fully in order to show the lack of probability of ultimate success in this action by the plaintiffs, an important consideration on an application for preliminary injunction.

6. The affiant has not had an opportunity to consult the representatives of many of the defendants concerning the facts and law in this action in so far as they affect the governmental departments of these defendants. Such preparation is necessary to make an adequate record on this motion.

7. On March 3, 1939, the affiant notified counsel that on March 7, 1939, defendants would request an adjournment of this motion.

8. If an adjournment is granted the defendants may, upon investigation and study, determine that answers may be

filed promptly and a final hearing had on the merits
344 in the interests of speedy justice and in accord with the practice of this Court in order to avoid a determination on this motion and a second similar determination on final hearing.

9. Any temporary restraining or injunctive relief to which the plaintiffs may be entitled may be obtained by application for a further preliminary restraining order pending determination of this motion for preliminary injunction or pending other disposition of this action.

WHEREFORE it is respectfully prayed that the plaintiffs' motion for a preliminary injunction be adjourned for thirty days.

EDWARD J. ENNIS

Sworn to before me this 6th day of March, 1939.

W. MARVIN SMITH

(Seal) *Notary Public, District of Columbia.*

My commission expires June 24, 1939.

345 Endorsed: Filed Mar 24 1939

In the District Court of the United States for the District of Columbia

Civil Action, File No. 1839

LUKENS STEEL COMPANY, a corporation, ALAN WOOD STEEL COMPANY, a corporation, SOUTH CHESTER TUBE COMPANY, a corporation, CENTRAL IRON & STEEL COMPANY, a corporation, HARRISBURG STEEL CORPORATION, a corporation, THE EASTERN ROLLING MILL COMPANY, a corporation, and ATLANTIC WIRE COMPANY, a corporation, *Plaintiffs,*

—against—

FRANCES PERKINS, individually and as Secretary of Labor of the United States, CHARLES V. McLAUGHLIN, individually and as Assistant Secretary of Labor of the United States, L. METCALFE WALLING, individually and as Administrator of the Division of Public Contracts of the Department of Labor of the United States, HENRY MORGENTHAU, JR., individually and as Secretary of the Treasury of the United States, CHRISTIAN JOY PEOPLES, individually and as Director of the Procure-

ment Division of the Department of the Treasury of the United States, CLAUDE AUGUSTUS SWANSON, individually and as Secretary of the Navy of the United States, HARRY HINES WOODRING, individually and as Secretary of War of the United States, HAROLD L. ICKES, individually and as Secretary of the Interior of the United States, and JAMES A. FARLEY, individually and as Postmaster General of the United States, *Defendants.*

DISTRICT OF COLUMBIA, *ss.:*

M. L. Ring, Commander, S. C., being duly sworn on oath, states that he is Purchasing Officer of the Bureau of Supplies and Accounts of the Navy Department; that he supervised the issuance of invitations to bid, the opening of bids, and the awarding of contracts pursuant to Navy
346 Schedules 5681 and 5682 to which the temporary restraining order issued by the court in the above-entitled proceeding on February 28, 1939 related; that Navy Schedule 5681, constituting an invitation to bid, was issued by the Bureau of Supplies and Accounts of the Navy Department on February 15, 1939, and, as issued, contained the representations and stipulations required by Public Act No. 846, 74th Congress, which representations and stipulations included the determination of the Acting Secretary of Labor, dated January 16, 1939, in respect of the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the iron and steel industry; that three contracts were awarded pursuant to said Navy Schedule 5681; that bids for certain items specified in said Navy Schedule 5681 were filed by Bethlehem Steel Company, Carnegie-Illinois Steel Corporation and Jones & Laughlin Steel Corporation; that the bid of the Bethlehem Steel Company was made subject to the condition that the representations and stipulations requiring compliance with the determination, dated January 16, 1939, issued by the Acting Secretary of Labor, would be inoperative in the performance of, and should not apply to any contract that might be awarded to said Bethlehem Steel Company pursuant to such bid; that both the Jones & Laughlin Steel Corporation and Carnegie-Illinois Steel Corporation agreed to the above-mentioned representations and stipulations; that the Carnegie-Illinois Steel

Corporation was the lowest bidder for certain specified items called for by said Navy Schedule 5681; and that the contract for said items was awarded to said Carnegie-Illinois Steel Corporation; that bids for certain other
347 items specified in said Navy Schedule 5681 were filed by Bethlehem Steel Company, Carnegie-Illinois Steel Corporation, Joseph P. Cattie & Brothers, Penn Galvanizing Company, Enterprise Galvanizing Company, Thomas Gregory Galvanizing Company, Jones & Laughlin Steel Corporation, and Ross Galvanizing Company; that the bid of the Bethlehem Steel Company was made subject to the condition referred to above; no other bidder excepted to the above-mentioned representations and stipulations; that the Ross Galvanizing Company was the lowest bidder for such items specified in said Navy Schedule 5681; and that the Contract for said items was awarded to said Ross Galvanizing Company; that bids for certain other items specified in said Navy Schedule 5681 were filed by Bethlehem Steel Company, Carnegie-Illinois Steel Corporation, Joseph P. Cattie & Brothers, Penn Galvanizing Company, Enterprise Galvanizing Company, Thomas Gregory Galvanizing Company, Jones & Laughlin Steel Corporation, and Ross Galvanizing Company; that the bid of the Bethlehem Steel Company was made subject to the condition referred to above; that no other bidder excepted to the above-mentioned representations and stipulations; that the Penn Galvanizing Company was the lowest bidder for such items specified in said Navy Schedule 5681; and that the contract for said items was awarded to said Penn Galvanizing Company; that two contracts were awarded pursuant to Navy Schedule 5682; that bids for certain items specified in Navy Schedule 5682 were filed by Bethlehem Steel Company, Carnegie-Illinois Steel Corporation, Lebanon Steel and Iron Company; that the bid of the Bethlehem Steel Company was made subject to the condition that the representations and stipulations requiring compliance with the determination dated January 16, 1939, issued by the
Acting Secretary of Labor, would be inoperative in
348 the performance and should not apply to any contract that might be awarded to said Bethlehem Steel Company pursuant to such bid; that both the Carnegie-Illinois Steel Corporation and the Lebanon Steel and Iron Company agreed to the above-mentioned representations

and stipulations; that the Carnegie-Illinois Steel Corporation was the lowest bidder for such items specified in said Navy Schedule 5682; and that the contract for said items was awarded to said Carnegie-Illinois Steel Corporation; that bids for certain other items specified in Navy Schedule 5682 were filed by Carnegie-Illinois Steel Corporation, Joseph P. Cattie & Brothers, Penn Galvanizing Company, Enterprise Galvanizing Company, Thomas Gregory Galvanizing Company, Ross Galvanizing Company, and Southern Galvanizing and Plating Company; none of the bidders excepted to the above-mentioned representations and stipulations; that the Ross Galvanizing Company was the lowest bidder for such items specified in said Navy Schedule 5682; and that the contract for said items was awarded to said Ross Galvanizing Company; that no persons, other than those hereinabove referred to, submitted bids pursuant to said Navy Schedules 5681 or 5682.

Affiant further states that Navy Schedule 900/2380, constituting an invitation to bid, was issued by the Bureau of Supplies and Accounts on February 10, 1939, and Navy Schedule 900/2381, constituting an invitation to bid, was issued by the Bureau of Supplies and Accounts of the Navy Department on February 11, 1939, and that each of said Schedules, as issued, contained representations and stipulations pursuant to Public Act No. 846, 74th Congress, which representations and stipulations included the determination, dated January 16, 1939, issued by the Act-
349 ing Secretary of Labor, in respect of the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the iron and steel industry; and that all other Schedules constituting invitations to bid on contracts subject to the provisions of Public Act No. 846, 74th Congress, for the manufacture or furnishing of the products of the iron and steel industry subject to the determination of the Acting Secretary of Labor, dated January 16, 1939, bids on which are to be opened on or after March 1, 1939, as issued, include the representations and stipulations in respect of the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the iron and steel industry as determined by the Acting Secretary of Labor on January 16, 1939.

M. L. RING,

Subscribed and sworn to before me this 6th day of March, 1939.

(Seal) RITA MARIE SULLIVAN

350 In the District Court of the United States for the District of Columbia

LUKENS STEEL COMPANY, ET. AL., *Plaintiffs*,

—against—

FRANCES PERKINS, ET. AL, *Defendants*.

Civil Action File No. 1839

Filed March 24, 1939

Defendants' Cross-Designation of Record on Appeal

The defendants respectfully request this Court to direct and order the Clerk of this Court to prepare the record on appeal and, under his hand and the seal of this Court, to transmit to the Court of Appeals of the District of Columbia a true copy of the matter designated by the parties, by excluding therefrom the papers and proceedings designated in the plaintiffs' "Praecipe and Designation of Record" filed March 15, 1939 herein which are designated and numbered 2, 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, and 22, and by including the additional following papers and proceedings:

(1) This Cross-designation of Record;

(2) The order of this Court upon the Designation and Cross-designation settling and determining the contents of the record on appeal.

EDWARD J. ENNIS
Attorney for defendants.

Receipt of copy of the foregoing Cross-designation of Record is hereby acknowledge this 16th day of March, 1939.

ROBERTS B. THOMAS
Attorney for plaintiffs.

351 In the District Court of the United States for the District of Columbia

LUKENS STEEL COMPANY, ET. AL., *Plaintiffs,*

—against—

FRANCES PERKINS, ET. AL, *Defendants.*

Civil Action File No. 1839

Filed March 24, 1939

Defendants' Cross-Designation of Record on Appeal

The defendants respectfully request this Court to direct and order the Clerk of this Court to prepare the record on appeal and, under his hand and the seal of this Court, to transmit to the Court of Appeals of the District of Columbia a true copy of the matter designated by the parties, by including therein, in addition to the orders and proceedings designated in the plaintiffs' "Praecipe and Designation of Record" filed March 15, 1939, the following additional papers and proceedings:

(1) Affidavit of Edward J. Ennis served on the attorneys for plaintiffs on March 6, 1939, and filed on March 24, 1939;

(2) Affidavit of M. L. Ring served on the attorneys for the plaintiffs on March 8, 1939 and filed on March 24, 1939.

(3) This Cross-designation of Record;

(4) The order of this Court upon the Designation and Cross-designation settling and determining the contents of the record on appeal.

EDWARD J. ENNIS,
Attorney for defendants.

Receipt of a copy of the foregoing Cross-designation of Record is hereby acknowledged this 17th day of March, 1939.

ROBERTS B. THOMAS
Attorney for plaintiffs.

Endorsed on Cover: No. 7368. Lukens Steel Co. et al. Appellants, vs. Perkins et al., United States Court of Appeals for the District of Columbia Filed Mar 17 1939. Joseph W. Stewart, Clerk.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 3056

LUKENS STEEL COMPANY, A CORPORATION; ALAN WOOD STEEL COMPANY, A CORPORATION; SOUTH CHESTER TUBE COMPANY, A CORPORATION; CENTRAL IRON & STEEL COMPANY, A CORPORATION; HARRISBURG STEEL CORPORATION, A CORPORATION; THE EASTERN ROLLING MILL COMPANY, A CORPORATION; AND THE ATLANTIC WIRE COMPANY, A CORPORATION, PETITIONERS-APPELLANTS.

vs.

FRANCIS PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES; CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES; L. METCALF WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES; HENRY MORGENTHAU, JR., INDIVIDUALLY AND AS SECRETARY OF THE TREASURY OF THE UNITED STATES; CHRISTIAN JOY PEOPLES, INDIVIDUALLY AND AS DIRECTOR OF THE PROCUREMENT DIVISION OF THE DEPARTMENT OF THE TREASURY OF THE UNITED STATES; CLAUDE AUGUSTUS SWANSON, INDIVIDUALLY AND AS SECRETARY OF THE NAVY OF THE UNITED STATES; HARRY HINES WOODRING, INDIVIDUALLY AND AS SECRETARY OF WAR OF THE UNITED STATES; HAROLD L. ICKES, INDIVIDUALLY AND AS SECRETARY OF THE INTERIOR OF THE UNITED STATES; AND JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, RESPONDENT-APPELLEES.

Appeal Record Docketed in No. 7368

United States Court of Appeals for the District of Columbia. Filed Mar. 17, 1939. Joseph W. Stewart, Clerk.

Petition for temporary injunction pending final hearing and determination of this cause on appeal

The petitioners-appellants Lukens Steel Company, Alan Wood Steel Company, South Chester Tube Company, Central Iron & Steel Company, Harrisburg Steel Corporation, The Eastern Rolling Mill Company, and The Atlantic Wire Company (hereinafter referred to as petitioners) petition and move this Honorable Court to issue a temporary injunction as set forth in the proposed form of order annexed hereto as Schedule A, to wit, a temporary injunction, in substance restraining, pending final determination of petitioners' appeal:

(a) Respondents Perkins, McLaughlin, and Walling, individually and in their respective official capacities as Secretary of Labor, Assistant Secretary of Labor, and Administrator of the Division of

Public Contracts of the Department of Labor, from continuing in effect and holding out as effective a Determination dated January 16, 1939, and effective March 1, 1939 (hereinafter called the Determination), which respondent McLaughlin (acting with the approval and participation of respondent Perkins) purported to make pursuant to the Public Contracts (Walsh-Healey) Act [1] and which fixes the minimum wages which members of the Iron and Steel Industry who desire to bid on contracts to be let by agencies of the United States must agree to pay to employees engaged in the performance thereof; and

(b) Respondent Peoples, individually and as Director of the Procurement Division of the Department of the Treasury, and the remaining respondents, individually and in their respective official capacities, from giving effect to the Determination in the bidding upon and award of public contracts for the manufacture or furnishing of products of the Iron and Steel Industry; and to grant the opportunity of oral argument on said petition and, in support of said petition, show to the Court the following:

I. Summary Statement of the Nature of the Action; the Decision of the Court Below; and the Necessity for Relief Pending Determination of Appeal

Because of—

(a) The great public importance of this cause, and

(b) The impelling necessity for a stay pending determination on appeal to avoid—

(i) Irreparable injury to petitioners so grave as to impair substantially, if not completely, the effect of an ultimate determination in their favor, and

(ii) The confusion with respect to, and probable illegality of, all contracts let by Goverment agencies for iron and steel products, including those required for the Government's rearmament program, which will otherwise result, petitioners are filing a more detailed petition and exhaustive memorandum in support thereof than is customary, and are also requesting oral argument.

A brief summary, amplified in succeeding portions of the petition and in such memorandum, of the nature of the cause, the decision of the Court below and the necessity for relief pending appeal is as follows:

1. Petitioners, seven of the smaller Eastern producers of iron and steel products (Ex. 1,[2] Pars.[3] 3–10A), commenced this action prior to the effective date (March 1, 1939) of the Determination, the valid-

---

[1] Act of Congress approved June 30, 1936; Public—No. 846—74th Cong.; 49 Stat. 2036–2039, c. 881.

[2] All exhibits filed herewith are made a part hereof. Such exhibits are numerous and are bound, indexed and filed under separate cover for the convenience of the Court. Such exhibits include all material portions of the record on appeal now in course of preparation.

[3] Paragraph references throughout are to the Complaint (Exhibit 1 hereto) unless otherwise stated.

ity of which they challenge, by filing their Complaint for Injunction and Declaratory Judgment in the District Court of the United States for the District of Columbia on February 25, 1939. In the Complaint (Prayer, Pars. 1–5) they prayed for a temporary restraining order, preliminary injunction and final injunction enjoining the respondents from causing or permitting the Determination to become effective and from giving any effect whatsoever thereto, as well as a declaratory judgment that the Determination is invalid and void as having been made without the authority of the Public Contracts Act. A copy of the Complaint, as amended,[1] (herein called the Complaint) is filed herewith as Exhibit 1.

2. After first having granted a limited form of temporary restraining order on February 28, 1939 (Exhibit 20), the Court below (Mr. Justice Bailey), on motion of respondents (Exhibit 25), dismissed the Complaint, on March 14, 1939 (Exhibit 27), and for that reason refused to rule upon or grant petitioners' motion for preliminary injunction (Exhibit 3). At the same time, stay pending appeal was denied (Exhibit 27).

3. Petitioners have noticed an appeal from such dismissal and refusal (Exhibit 28), have filed their assignment of errors (Exhibit 29) and designation and are diligently taking, and will continue to take, all steps necessary to perfect such appeal at the earliest opportunity.

4. Unless the stay sought herein is granted, petitioners, having already suffered irreparable injury as a result of the invalid Determination and the enforcement thereof (see pages 19 to 21, *infra*) will, pending appeal, suffer further irreparable injury of a character which may be so grave as to render an ultimate determination in their favor of limited benefit. Invitations to bid on numerous large and important contracts for iron and steel products in connection with the Government's rearmament program, and otherwise, are to be issued within the near future by various Government agencies (see pages 16 to 18, *infra*). Unless the requested stay is granted, petitioners will be unable to submit bids which will receive consideration without agreeing therein to comply with the Determination which they contend is illegal.

Moreover, if the Determination is invalid, as claimed by petitioners, and such stay is not granted, *all* contracts awarded pursuant to such invitations and containing provisions for payment of minimum wages required by the Determination will be illegal, or, at best, of doubtful validity.

On the other hand, grant of the stay sought will in no way impair or interfere with the conduct of public business. It will merely permit public contracts of unquestioned validity for iron and steel

[1] The Complaint was amended pursuant to an order granting appropriate leave, a copy of which is filed herewith as Exhibit 2. For the convenience of the Court, the amendments (which amend paragraphs 3, 9, 51, 52, 55, 58, and 60 of the Complaint, as originally filed, and add a new paragraph 10A) have been indicated on the copy of the Complaint filed herewith as Exhibit 1.

products to be awarded, *pendente lite*, without stipulations requiring compliance with the Determination, just as such contracts have been awarded over the years (and more particularly since June 30, 1936, the date of passage of the Public Contracts Act, which the authors of the Determination claim authorized its issuance).

The stay sought will not involve any increased cost to the Government; on the contrary, it will arrest the tendency towards monopoly created by the Determination. (See pages 17–18, 19–20, *infra*.) The Iron and Steel Industry is one in which workers are well paid (see pages 8 and 28, *infra*). Consequently, no impelling public interest will be served by denying the stay sought pending final adjudication of the validity of the Determination, the legality of which is now indisputably shrouded in doubt.

II. The Invalidity of the Determination

5. Except as otherwise expressly provided by law, neither any agency of the United States, nor any contracting officer acting on behalf thereof, may lawfully insert in any contract for materials or equipment any provision requiring any contractor to pay to any person employed in the performance of such contract any particular rate of wages. (Par. 21.)

6. The Public Contracts Act (hereinafter sometimes called the Act) provides, *inter alia*, in substance, that in any contract made by any agency of the United States for the manufacture or furnishing of materials or equipment in any amount exceeding $10,000, there shall be included a representation and stipulation "That all persons employed by the contractor * * * in the performance of the contract will be paid * * * not less than the minimum wages as determined by the Secretary of Labor to be the PREVAILING MINIMUM WAGES for persons employed on similar work or in the particular or similar industries or groups of industries currently operating IN THE LOCALITY IN WHICH THE MATERIALS * * * or equipment ARE TO BE MANUFACTURED OR FURNISHED UNDER SAID CONTRACT * * *" (Sec. 1 (b).) "Provided, however, That the provisions [of the Act] requiring the inclusion of representations with respect to minimum wages shall apply only to * * * contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor." (Sec. 11.) [Emphasis added.]

7. The Determination purported to divide the United States into six areas, designated as "LOCALITIES," and to determine the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the Iron and Steel Industry therein. (Pars. 44, 45.) A copy of the Determination is annexed as Exhibit E to the Complaint.

The Determination was by its terms to become effective on January 31, 1939 (Par. 44), but the effective date was subsequently extended to March 1, 1939.[5] (Par. 47.)

8. The Determination states that "in the LOCALITY consisting of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine, and that portion of the State of West Virginia comprised within the counties of Hancock, Brooke, Ohio, Marshall, Harrison, and Monongalia, and the District of Columbia," the prevailing minimum wage is determined to be 62½ cents per hour. (Par. 44.)[6] [Emphasis added.]

9. Petitioners operate plants in the following "LOCALITIES": Coatesville, Ivy Rock, Conshohocken, Swedeland, Chester and Harrisburg, Pennsylvania; Colgate, Maryland; and Branford, Connecticut. (Pars. 3–10A.) The minimum wages paid by them vary, depending on the particular petitioner and the particular LOCALITY in which its plant is situated, from 52½ cents to 56½ cents per hour. (Ibid.) In four instances such minimum wages are paid pursuant to agreements with either the Steel Workers Organizing Committee (affiliated with the C. I. O.) or the Amalgamated Association of Iron, Steel, and Tin Workers of North America (affiliated with the A. F. of L.) (Pars. 3, 4, 5, 8.)

10. Under guise of construction of the term "locality," the Determination attempts to raise wages, by FIXING minimum wages NEVER THERETOFORE EXISTING, in the several localities in which petitioners' plants are situated, instead of ASCERTAINING what in fact are the minimum wages currently paid and ACTUALLY PREVAILING in such localities, as required by the Act. Such wage raising and fixing were sought to be accomplished by—

(i) Including such localities in a large region also embracing Pittsburgh, Youngstown, and other localities to the west in which, because of various geographical advantages enjoyed by the plants situated therein, the prevailing minimum wages for iron and steel workers are higher than those in the localities in which petitioners' plants are situated, and

(ii) Labeling such large region, consisting of 13 States, part of a fourteenth, and the District of Columbia, a "locality" within the meaning of the Act. (Pars. 51, 61 (iv).)

---

[5] Since the filing of the Complaint, respondents Perkins and McLaughlin have, in accordance with prior threats (Pars. 48, 56, 57, 59), made the Determination effective, except to the extent restrained by the temporary restraining order issued by the District Court on February 28, 1939 (Exhibit 20), and now dissolved.

[6] In the other five so-called "localities," viz. the "southern area" consisting of 12 states and part of a thirteenth (Comp., Ex. E, p. 10), the 3 west "coastal states" (Ibid, p. 12), the 8 "mountain states" (Ibid, p. 12) the 7 "remaining states east of the mountain states and west of the Mississippi" and the area about East Saint Louis, Illinois (Ibid, p. 13), and the 4 states in the "area immediately to the east of the trans-Mississippi locality" (Ibid, p. 14), the hourly prevailing minimum wages are determined to be 45 cents, 60 cents, 60 cents, 58½ cents and 62½ cents, respectively (Ibid, p. 18; Par. 44).

11. The Determination is void:

(a) The term "locality," as employed in Section 1 (b) of the Act, means the city, county, village, or other civil subdivision of a State in which work under a particular Government contract is to be performed, or the immediate vicinity of that place, or, at most, a narrowly restricted geographical area. (Par. 50.) This conclusion is compelled by the ordinarily accepted usage of the term, the context in which it is employed in the Act, the purpose the Act was designed to accomplish, the reports of Congressional committees thereon, the statements of its proponents in the Congressional debates and the grave constitutional doubts that would arise from the contrary construction adopted in the Determination which would confer unguided legislative authority on the Secretary of Labor.

The 62½-cent minimum wage established in the Determination is not the prevailing minimum wage, in the Iron and Steel Industry, in or in the immediate vicinity of any city, county, village, or other State civil subdivision in which any of the plants of the petitioners are located, or in any small geographical area surrounding any such plant or city, county, village or other State civil subdivision.[1] (Par. 51; Comp. Ex. G.)

In fact, 62½-cent minimum wage is paid only 1 plant and to only 8 employees in all the cities, counties, villages, and other State civil subdivisions in which plants of the petitioners are located. (Comp. Ex. G.).

Indeed, a minimum wage rate lower than 62½ cents per hour is paid by all but 3 plants (operated by 1 company employing 115 common laborers) out of a total of 60 plants employing 5,541 common laborers located in the communities within the entire area comprising the New England States and the States of Delaware, New Jersey, and Maryland; that part of the States of New York and Pennsylvania lying east of a line drawn north and south through the most easterly point of Altoona, Pennsylvania; and that part of the State of West Virginia lying south of a line drawn west in extension of the southerly boundary of the State of Pennsylvania. (Par. 52.) The plants of all petitioners are situated in communities in such area.

(b) The term "locality" as employed in Section 1 (b) of the Act was interpreted in the Determination by respondent McLaughlin as embracing any area, however large, which the Secretary of Labor might choose in the light of economic factors as a region within which to determine prevailing minimum wages in the Iron and Steel

[1] The wage statistics set forth herein and in the Complaint are taken from the Findings of Fact, Conclusions and Recommendations of the Public Contracts Board for the Consideration of the Secretary of Labor dated October 27, 1938 (hereinafter called the Report), a copy of which is annexed as Exhibit B to the Complaint. The Public Contracts Board held what it called a "hearing" prior to rendering the Report. (Pars. 30–39.) The respondent McLaughlin in making the Determination accepted and relied on the findings of fact (including the findings in respect of wage data) set forth in the Report. (Par. 51.)

ndustry. (Par. 50.) This constituted a plain error of law. (Ibid.) he entire Determination—was predicated on such construction. Ibid.)

(c) Even if the construction of the Act adopted by respondent lcLaughlin as aforesaid be correct, the Determination is, neverthe-ss, arbitrary and capricious and, therefore, invalid, since—

(i) The only so-called "economic factor" referred to in the De-rmination to justify the selection of the 13 States, a portion of a urteenth, and the District of Columbia, as the single "locality" in hich petitioners' plants are located, is the alleged fact (denied by etitioners) that a single market area is predominantly served by e plants in the Iron and Steel Industry located in such area. In iving controlling significance to such alleged fact, respondent Mc-aughlin, in effect, converted the Act into one authorizing the fixing f equal wages for persons employed by manufacturers (wherever cated) who market their products in the same area, as distinguished rom one authorizing the ascertainment of prevailing minimum ages in localities in which goods are produced. (Par. 52 (a).)

(ii) The Determination completely and erroneously ignores and ils to give effect to the undisputed fact that there are and have en for many years well-defined geographical wage differentials in ch area comprising 13 States, a portion of a fourteenth and the istrict of Columbia. (Par. 52 (b).) Both the express language of he Act and its legislative history show that the Secretary of Labor as given no power to eliminate geographic wage differentials. Such ifferentials are the composite result of the interaction of a large umber of economic factors and forces, and the Determination itself Comp. Ex. E, pp. 10–14) expressly states or impliedly recognizes, n selecting each of the five other so-called "localities" set up thereby, hat such geographical wage differentials are factors of great, if not ontrolling, importance in determining the area to be included within ny "locality" for the purposes of the Act.

The well-recognized and long-existing wage differentials between he plants in the Iron and Steel Industry which are located in the estern portion (hereinafter sometimes called the Western District) f the so-called "locality" found to be comprised of 13 States, a por-ion of a fourteenth, and the District of Columbia, as aforesaid, and hose plants which were included by respondent McLaughlin in said locality," but which are also located in what are known in the In-ustry as the "Eastern District" (as in the case of petitioners' lants), the "Buffalo District" and the "Johnstown District," are hown by the following tabulation based on undisputed wage data aken from the Report of the Public Contracts Board (see Para-raph 52 of the Complaint and Exhibit G thereto):

	No. of plants	No. of wage earners	No. of common laborers
Eastern district—base rates:			
Under 56½¢	32	8,522	1,35
Exactly 56½¢	18	38,069	4,89
Over 56½¢ but under 62½¢	7	4,200	27
Exactly 62½¢	3	3,602	11
Over 62½¢			
	60	54,393	5,5
Buffalo district—base rates:			
Under 56½¢	4	1,412	17
Exactly 56½¢			
Over 56½¢ but under 62½¢	5	9,467	81
Exactly 62½¢			
Over 62½¢			
	9	10,879	98
Johnstown district—base rates:			
Under 56½¢			
Exactly 56½¢			
Over 56½¢ but under 62½¢	2	8,886	63
Exactly 62½¢			
Over 62½¢			
	2	8,886	63
Western district—base rates:			
Under 56½¢	6	4,909	87
Exactly 56½¢	1	53	2
Over 56½¢ but under 62½¢	3	973	3
Exactly 62½¢	91	149,319	10,36
Over 62½¢	1	501	6
	102	155,755	11,46
Total of such districts—base rates:			
Under 56½¢	42	14,843	2,36
Exactly 56½¢	19	38,122	3,97
Over 56½¢ but under 62½¢	17	23,526	1,09
Exactly 62½¢	94	152,921	10,65
Over 62½¢	1	501	6
	173	229,913	18,09

(d) Petitioners were not accorded the fair and impartial hearing by the Secretary of Labor, or an impartial representative designated by him, to which they were entitled under the Act, and particularly Section 5 thereof. (Pars. 26, 55.)

III. The Irreparable Injury Already Suffered by Petitioners and That Which Will Be Suffered if a Stay Is Denied

12. The respondents Perkins, McLaughlin and Walling have ruled that every contract by an agency of the United States for the manufacture or furnishing of iron and steel products, of a value of more than $10,000, entered into after March 1, 1939 (whether or not let pursuant to invitations to bid issued prior to said date) is covered by the Determination. Purporting to act pursuant to Section 4 of the Act, respondent Perkins has adopted a regulation (No. 504, Art. 1) requiring, in effect, that every invitation to bid on any such contract and every bid shall contain a stipulation binding the bidder to comply with the Determination. (Pars. 56, 57.)

13. Respondent Peoples, as Director of the Procurement Division, has directed, and intends to continue to direct, every such agency

desiring to enter into any such contract to include such a stipulation in such contract and the invitations to bid thereon, and to require the inclusion of such a stipulation in all bids thereon. (Par. 56.)

Respondents Morgenthau, Swanson, Woodring, Ickes, and Farley, unless restrained, intend to, and will, require the insertion of such stipulation in every such contract subject to their supervision or control, and in all invitations to bid and bids thereon. (Par. 59.)

14. Invitations to bid and required forms of bids, issued by various units of the Department of the Navy, contain and require such stipulations. (Par. 58; Ex. 4, 5.) Other agencies of the United States have taken similar action. (Ex. 16, 17.)

15. By reason of the foregoing, the petitioners are placed now, as they were at the time of institution of suit (see pages 19 to 21, *infra*), in a legal and practical dilemma which will result in their suffering the gravest and most immediate and irreparable injury.

For the most part, they have been profitably selling iron and steel products to agencies of the United States for many years. (Pars. 3-10A.) Some of them are presently engaged in performance of contracts with such agencies for the sale of substantial amounts of such products. (Pars. 3, 4.)

Officials of the Navy Department have recently stated that invitations to bid would be issued in the near future on proposed contracts covering iron and steel products. (Ex. 12, 14.) Moreover, the issuance of invitations to bid on numerous large and important contracts for such products by other agencies of the United States, including the War Department, the Treasury Department, the Department of the Interior, and the Post Office Department, is expected within the immediate future. (Par. 60; Ex. 11.) Until issued, all such invitations are, of course, confidential, and the exact date of issue cannot, therefore, be stated at this time. However, the Court will take judicial notice of the fact that the various departments of the Government are continually issuing invitations to bid on iron and steel products and particularly in connection with the present well-known and advertised defense and public works programs.

Petitioners are desirous of bidding on such contracts and respectively intend, if the Determination is not continued in effect, to bid on such thereof as shall pertain to products manufactured and sold by them respectively. (Par. 60; Ex. 11, 12, 14.)

If the Determination shall be permitted to remain in effect, *pendente lite*, the petitioners will be unable, during such time, due to the illegal action taken and threatened by the respondents as aforesaid, to submit any bids on such contracts which will receive consideration in the award thereof unless they stipulate that they will pay minimum wages of 62½ cents an hour to all employees engaged in the performance thereof. (Par. 62 (i).)

If, however, they bid upon, and enter into, any such contracts containing such stipulations, they will not only have been deprived

of their lawful right to bid upon Government contracts, free of any limitations other than those imposed by Congress, but will be in danger of being estopped to secure a judicial decision as to the invalidity of the Determination. Moreover, the penalties provided in the Act (Sections 2 and 3) for noncompliance with any such stipulation (including heavy "liquidated damages," contract cancellation and blacklisting from Government business for three years) would present such hazards as to deter them from failing to comply with the unlawful Determination in order to test its validity. (Par. 61 (ii).)

Furthermore, petitioners, as a practical matter, in bidding under such circumstances, would be required to bid at prices sufficiently high to permit payment of the wages fixed by the Determination, or to court financial ruin. But, if they bid at such prices, they will presumably be unable to compete successfully with large, fully integrated companies having plants in more favorable geographical positions in the West and South whose wage rates are not increased by the Determination. (Par. 61 (iv): Ex. 4, 5, 6, 7, 8, 9, 10.)

The natural consequences of allowing the Determination to continue in effect, therefore, will be to drive petitioners out of competition for Government business and to create a monopoly thereof in favor of the large, fully integrated companies. (Ibid.)

But even if, as a practical matter, petitioners could, pending appeal, obtain the award of such contracts containing such stipulation, the effect thereof would be, substantially, to make petitioners' appeal herein moot. An increase in the present minimum wages paid by petitioners to common laborers employed in the performance of such contracts would, from a practical standpoint, necessitate a corresponding increase in the wage rates for all classes of wage earners employed, and all classes of work done, by petitioners. (Par. 61 (iii), 4–9.) Consequently, the effect of taking Government contracts under existing circumstances would not only be to afford a basis to the Secretary of Labor for a redetermination and finding that the prevailing minimum wages paid in the localities in which petitioners' plants are located are 62½ cents an hour, but would also endanger petitioners' standing in Court in that the primary grievance of which they complain, viz, that the Determination unlawfully requires payment of wages in excess of those which they are now paying, would disappear.

The granting of the relief prayed herein is, therefore, necessary both to prevent immediate and irreparable injury from being suffered by the petitioners and to preserve the appellate jurisdiction of this Court.

16. As shown by the facts hereinafter set forth, petitioners have already suffered great and irreparable injury as a result of the Determination and the enforcement thereof by respondents as aforesaid.

17. The Complaint alleged (Par. 58) that between March 1, 1939, and March 10, 1939, bids theretofore invited on contracts for the

manufacture of iron and steel products for very substantial amounts were scheduled to be opened by the Navy Department, with a view to awarding contracts thereon; that petitioners Lukens Steel Company (hereinafter called Lukens), Alan Wood Steel Company (hereinafter called Alan Wood), and Central Iron and Steel Company (hereinafter called Central), desired to bid, and if the Determination did not become effective, would bid on one of such contracts (Schedule 5681); and that some or all of the plaintiffs desired to, and if the Determination did not become effective would, submit bids on some or all of the other contracts referred to.

18. The temporary restraining order issued by the Court below on February 28, 1939 (Ex. 20), did not enjoin respondents from making the Determination effective (as prayed in the Complaint), except in a limited manner which, for reasons hereinafter more fully set forth (pp. 25, 26, *infra*), did not accord to petitioners, or any of them, relief sufficient to permit them to bid on such proposed contracts.

19. On March 2, 1939, the bids on one of such contracts, Schedule No. 5681 of the Bureau of Supplies and Accounts of the Department of the Navy, covering approximately 7,375 tons of steel plates, sheet and strip, were opened. Carnegie-Illinois Steel Company, a large integrated steel producer in the Pittsburgh area, submitted the lowest of only three bids, and was awarded the contract, for the black (or nongalvanized) plates covered by said proposed contract. The estimated value of said contract is $350,000. Central, Alan Wood, and Lukens would have bid upon said schedule No. 5681 had the temporary relief prayed in the Complaint been granted. Petitioner Central Iron & Steel Company had prepared and would have submitted a bid actually lower than that of the Carnegie-Illinois Steel Company above referred to. (Ex. 11–14.)

20. Because of the failure and refusal of the Court below to grant the temporary relief prayed in the Complaint, Alan Wood was prevented from bidding on the proposed contract, Schedule No. 7447, of the Mare Island Navy Yard of San Francisco, California, bids on which were opened on March 6, 1939; petitioner The Eastern Rolling Mill Company was prevented from bidding on a proposed contract, Schedule No. 5748, of the Bureau of Supplies and Accounts of the Department of the Navy, the bids on which were opened on March 14, 1939; and Central and Alan Wood were prevented from bidding on a proposed contract, Schedule No. 3433, issued by the General Purchasing Officer of the Panama Canal, bids on which were opened on March 15, 1939. (Ex. 12, 14, 11, 17.)

21. Alan Wood is in danger of losing the award, if it has not already lost the award, on a proposed contract, No. 33119–A, Schedule 1, of the Reclamation Bureau of the Department of the Interior, on which bids were opened *February 6, 1939* (22 days before the Determination became effective), by reason of the refusal of said petitioner to agree to comply with the Determination. (Ex. 16.)

IV. Petitioners' Right to Attack the Determination

22. As shown above, petitioners' right to bid and negotiate for Government contracts and to conduct their business relations with the Government free from illegal interference has been unlawfully invaded, and is threatened with further unlawful invasion, with attendant irreparable injury, by the respondents.

23. Respondents contended below that, however grievous the abuse of power by the Secretary of Labor and however great the damage inflicted on petitioners, they had no standing in Court because the right asserted by them as aforesaid was not one entitled to legal protection in any Court or in any type of action. This contention, shocking to the conscience, was not sustained by the Court below.

24. The authorities showing that petitioners have a legal right to bid upon and negotiate contracts with the Government, which is entitled to protection against unauthorized interference by administrative public officials, are set forth at length in the memorandum accompanying this petition. Stated in most summary fashion, petitioners' contentions in this regard are as follows:

(a) The right to bid for Government contracts is only one phase of the common law right of every person to conduct a legitimate business—pursue a legitimate calling—and in the conduct thereof to seek to sell the products or services of that business free from unjustifiable interference, restraint, and coercion by others.

(b) The Government has been a customer of all the petitioners save one and is now a party to contracts with several. The unauthorized action of the respondents, who are third parties vis-a-vis the petitioners and the Government, raises an unlawful barrier between the petitioners and their customer and unjustifiably interferes with the petitioners' right to negotiate contracts with that customer subject only to conditions imposed by it. In other words, although the Government (the customer), acting through powers constitutionally delegated to Congress, may, like any other customer, impose such conditions as it sees fit upon doing business with it, the respondents may not, any more than any other third party, interfere with or obstruct the petitioners in their efforts to do business with their customer.

(c) The statutes relating to bidding for Government contracts recognize and affirm the right of bidders to be free from unauthorized interference and restrictions in bidding therefor:

(i) The Public Contracts Act itself, by imposing certain conditions on the right to bid for Government contracts, excludes the imposition of conditions other than those prescribed.

(ii) Section 3709 of the Revised Statutes which, as interpreted, requires competitive bidding, after advertising, on public contracts and the award thereof to the lowest responsible bidder, likewise recognizes and confirms such right. The purpose of such statute would be utterly

defeated if prospective bidders were not protected in the exercise of their right to bid for Government contracts against arbitrary and illegal interference from administrative officers.

V. The Action of the Court Below and the Reasons Therefor

25. As stated above, the Court below (Mr. Justice Bailey), on motion of respondents, dismissed the Complaint on March 14, 1939 (Ex. 27), and, for that reason, refused to rule upon or grant petitioners' motion for preliminary injunction (Ex. 3).

26. At the same time, the temporary restraining order issued February 28, 1939, as thereafter extended, was dissolved and stay pending appeal was denied (Ex. 27).

27. Mr. Justice Bailey did not write an opinion stating the reasons for his action, nor did he make conclusions of law, as requested by petitioners. However, when announcing his decision from the bench, sustaining respondents' motion to dismiss, he assigned the following reasons, in substance therefor:

(1) It did not appear that the construction by the respondent McLaughlin in the Determination of the term "locality," as employed in the Act, was so *clearly erroneous* as to justify the intervention of a court; and

(2) It did not appear that the Determination was so *plainly arbitrary and capricious* as to justify the intervention of a court.

28. It is respectfully submitted that, for the reasons hereinabove outlined and more fully developed in the memorandum in support of this petition, Mr. Justice Bailey erred in concluding that the above-mentioned construction was not clearly erroneous and that the Determination was not plainly arbitrary and capricious. It is further submitted, however, that in erecting as tests for decision the criteria as to whether the Acting Secretary of Labor "clearly" erred as matter of law and was "plainly" arbitrary and capricious, the court below acted contrary to a long line of decisions by the Supreme Court of the United States.* Such decisions establish, it is believed, that if such respondent acted outside his statutory authority, or erred as matter of law, or, proceeding within his statutory authority, acted arbitrarily or capriciously, petitioners are entitled to the injunctive relief sought in the complaint.

29. In announcing from the bench that he would deny a stay pending appeal, Mr. Justice Bailey stated that, having dismissed the complaint, he felt that the proper forum for such application was this Court.

---

* Waite v. Macy, 246 U. S. 606; American School of Magnetic Healing v. McAnnulty, 187 U. S. 94; Gegiow v. Uhl, 239 U. S. 3; Lloyd Sabaudo Societa Anonima per Azioni v. Elting, 287 U. S. 329, 335–336; United States v. Laughlin, 249 U. S. 440; United States v. United Verde Copper Co., 196 U. S. 207; Merritt v. Welsh, 104 U. S. 694; Morrill v. Jones, 106 U. S. 466; United States v. George, 228 U. S. 14, 21; Work v. Mosier, 261 U. S. 352, 359; Johnson v. Towsley, 80 U. S. 72. See also dissenting opinion of Mr. Justice Brandeis in Crowell v. Benson, 285 U. S. 22, 89–91.

VI. The Relief Requested

30. This Court, of course, has jurisdiction to issue a temporary injunction or restraining order pending appeal.[9] It has not hesitated to grant such relief when necessary to protect the appellants' rights, even though the Court below has denied an injunction.[10]

31. The injunction pending appeal sought herein is one, in substance, (a) restraining respondents Perkins, McLaughlin and Walling from continuing the Determination in effect, and (b) restraining the other respondents from giving effect thereto in the bidding upon and award of Government contracts for iron and steel products.

32. The foregoing is the only type of injunction which will preserve the *status quo ante* the Determination and accord to petitioners adequate relief against the irreparable injury which will otherwise be inflicted upon them by the Determination and its enforcement.

For example, temporary injunctive relief of the character embodied in the temporary restraining order issued by the Court below (Ex. 20), (towit, an injunction restraining only the Secretary of Labor and a named contracting officer or officers from giving effect to the Determination with respect to bids by certain petitioners on specified Government contracts) will not afford any real relief to petitioners. Such an injunction would create two classes of bidders on the contracts specified:

(1) A favored class, comprised of the particular petitioners named, who could submit bids without agreeing to abide by the Determination; and.

(2) Another class, comprised of the rest of the world, which could submit bids only with agreements to pay the wages specified in the Determination.

By creating such two classes of bidders, such an injunction would likewise create a situation wherein any contract awarded to the petitioners would either be illegal as in contravention of Section 3709 of the Revised Statutes (requiring competitive bidding, after advertising, on public contracts and the award thereof to the lowest responsible bidder)[11] or, at best, of doubtful validity.

33. An injunction as prayed is the only type of injunction that will prevent the chaotic situation in the award of Government iron and steel contracts which is now threatened. If the Determination is

---

[9] Section 33 of Title 18 of The Code of the District of Columbia (Act of February 9, 1893, 27 Stat. 436, c. 74, sec. 11; Act of March 3, 1901, 31 Stat. 1227, c. 854, sec. 230) provides as follows:

"The said court of appeals shall have power to issue all necessary and proper remedial prerogative writs in aid of its appellate jurisdiction."

The Federal Rules of Civil Procedure do not in any way limit the power of this Court to grant such an injunction or restraining order.

[10] Bank of America v. Douglas et al., Original No. 3036, decided February 7, 1939; Utah Fuel Company v. National Bituminous Coal Commission, Original No. 2970; Hutchins Mutual Insurance Co. v. Hazen et al., Original No. 3006; Quinn v. Dougherty, No. 4773, decided November 17, 1928; Gritts v. Fisher, No. 2311, decided June 7, 1911; Oklahoma Utilities Company v. Ickes et al., No. 6509, decided July 9, 1935; Haskins Bros. & Co. v. Morgenthau et al., No. 6710, decided May 29, 1936.

[11] 20 Op. of At. Gen. 496, 499–500; 15 Dec. Comp. Gen. 944; 14 Dec. Comp. Gen. 518; 15 Dec. Comp. Gen. 846; Hannan v. Board of Education, 107 Pac. 676, 30 L. R. A. (N. S.) 14; Fones Bros. Hardware Co. v. Erb, 17 S. W. 7.

invalid, as claimed by petitioners, and either a limited injunction of the character granted by the court below is issued, or no injunctive relief is granted, all contracts awarded pending determination of this appeal which contain a stipulation requiring compliance with the Determination will be illegal, under R. S. Sec. 3709.

In the absence of express statutory authority, an executive department or officer may not lawfully include, in invitations for bids or contracts on Government work, any stipulation requiring the contractor to pay any specified wage rate to employees engaged in the performance of the contract (10 Dec. Comp. Gen. 301; Senate Report No. 1157, 74th Cong., 1st Sess.). To do so is to remove from competitive bidding an important element of cost and thus to defeat the purpose of R. S. Sec. 3709 requiring the award of Government contracts (except as otherwise expressly provided by law) to the lowest responsible bidder. (Ibid.) Consequently, any contract let under such circumstances is illegal. (Ibid.)

Issuance of the injunction prayed will permit the award of Government contracts for iron and steel free from the taint of illegality introduced by the Determination on March 1, 1939.

No public interest requires risking the impending confusion in the letting of public contracts which will result if the stay prayed is not granted. The effect of the stay prayed will be merely to continue the *status quo ante* the Determination which existed for many years. The Iron and Steel Industry is not sweatshop in character.[12] The Secretary of Labor himself waited more than two and one-half years before attempting to make effective any determination of minimum wages therefor under the Act. The time required for a decision on the validity of that determination will be only a fraction of that which the Secretary voluntarily permitted to pass before attempting to act.

The eminent desirability of avoiding the chaotic situation that would ensue from permitting the Secretary's Determination to become effective and cast the pall of illegality on all contracts containing provisions for compliance therewith was the very reason why petitioners instituted suit prior to the effective date of the Determination. It is not too late for this Court substantially to avoid that chaos. Few contracts have been let in the interim. But unless the Court now grants the temporary relief prayed by petitioners herein and compels the Secretary to take the action which he should in any event take voluntarily, the Government's entire rearmament and public-works program may be adversely affected.

---

[12] For example, the minimum wages paid by petitioners are substantially above the average paid in other industries in the communities in which petitioners' plants are situated. (Pars. 3, 5; Ex. 4, 14, 12, 6, 7, 8.) In four instances such wage rates are paid pursuant to agreements with either the Steel Workers Organizing Committee or the Amalgamated Association of Iron, Steel and Tin Workers of North America. (Pars. 3, 4, 5, 8.)

Wherefore, showing the above, petitioners pray that a temporary injunction as set forth in the proposed form of order annexed hereto as Schedule A be issued pending appeal.

Dated March 16, 1939.

O. MAX GARDNER,
ROBERTS B. THOMAS,
FREDERICK H. KNIGHT,
Counsel for Petitioners-Appellants.

Copy received March 16, 1939.

EDWARD J. ENNIS,
Attorney for Defendants.

DISTRICT OF COLUMBIA, *ss.*:

Roberts B. Thomas, being first duly sworn, according to law upon oath deposes and says;

I am a citizen of the United States, over 21 years of age, and a resident of the County of Nassau, State of New York, and am an attorney duly admitted to practice in all the courts of the State of New York, the Supreme Court of the United States and the United States Court of Appeals for the District of Columbia. I am attorney for the petitioners-appellants named in the foregoing petition. All said petitioners-appellants are corporations and are absent from the District of Columbia. I have read the foregoing petition and verily believe the facts stated therein to be true.

ROBERTS B. THOMAS.

Subscribed and sworn to before me this 16th day of March, 1939

[NOTARIAL SEAL] EMMA NEAL MCQUEEN.
Notary Public, D. C.

My commission expires Oct. 15, 1941.

Schedule A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No.—

LUKENS STEEL COMPANY, *et al.*, PETITIONERS-APPELLANTS

vs.

FRANCES PERKINS, *et al.*, RESPONDENTS-APPELLEES

Injunction pending appeal

Upon consideration of the petition of petitioners-appellants Lukens Steel Company, Alan Wood Steel Company, South Chester Tube Company, Central Iron & Steel Company, Harrisburg Steel Corporation, The Eastern Rolling Mill Company, and The Atlantic Wire

Company (hereinafter referred to as the petitioners), filed herein March 16, 1939, it is adjudged, ordered and decreed that:

(a) Pending final determination of the appeal to this Court taken by petitioners from the judgment of the District Court of the United States for the District of Columbia which is referred to in said petition, respondents Frances Perkins, individually and as Secretary of Labor of the United States, Charles V. McLaughlin, individually and as Assistant Secretary of Labor of the United States, and L. Metcalfe Walling, individually and as Administrator of the Division of Public Contracts of the Department of Labor of the United States, and each of them, their and each of their officers, agents, assistants, employees, representatives, and attorneys, and anyone associated with or acting in concert or participation with them or any of them, and their successors in office, and each of them, and their offices, agents, assistants, employees, representatives and attorneys, and anyone associated with or acting in concert or participation with them or any of them, and each of them, be, and each of them hereby is, restrained and enjoined from continuing to promulgate, publish, or hold out, and from continuing to cause or permit to be promulgated, published or held out, as effective or valid or authorized by law, and from causing or permitting to be continued in effect, the Determination made under date of January 16, 1939, by respondent McLaughlin, as Acting Secretary of Labor, entitled "In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry" (hereinafter called the Determination); and

(b) Pending final determination of the above-mentioned appeal, respondents Henry Morgenthau, Jr., individually and as Secretary of the Treasury of the United States, Christian Joy Peoples, individually and as director of the Procurement Division of the Department of the Treasury of the United States, Claude Augustus Swanson, individually and as Secretary of the Navy of the United States, Harry Hines Woodring, individually and as Secretary of War of the United States, Harold L. Ickes, individually and as Secretary of the Interior of the United States; and James A. Farley, individually and as Postmaster General of the United States, and each of them, their and each of their officers, agents, assistants, employees, representatives and attorneys, and any one associated with or acting in concert or participation with them or any of them, and each of them be, and each of them hereby is, enjoined and restrained from (i) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract for the manufacture or furnishing of any iron or steel product or any product of the Iron and Steel Industry, or in any advertisement for bids on any such contract or in the specifications for any such contract, or in any bid on any such

contract, or in any required form for any such bid, or in any such contract, any stipulation or representation that any person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, or otherwise, not less than the minimum wages set forth in the Determination, or any stipulation or representation of like purport or effect, and (ii) inserting or causing or requiring or permitting to be inserted in any invitation to bid on any public contract for the manufacture or furnishing of any such product, or in any advertisement for bids on any such contract, or in the specifications for any such contract, or in any bid on any such contract, or in any required form for any such bid, or in any such contract, the following stipulation or representation:

"All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles or equipment are to be manufactured or furnished under the contract; Provided, however, That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor."

or any stipulation or representation of like purport or effect; provided, however, that the provisions of clause (ii) of this subparagraph (b) shall not apply to any invitation to bid or advertisement issued or published after the effective date of any new determination by the Secretary of Labor of the United States, made subsequent to the date hereof in good faith and pursuant to law, with respect to prevailing minimum wages to be paid by public contractors to persons employed in the manufacture or furnishing to agencies of the United States of iron or steel products or products of the Iron and Steel Industry, or to any bid in response to any such invitation or advertisement, or to any required form for any such bid, or to any contract awarded upon any such bid, or to any specification for any such contract.

Index to Exhibits

Document	Exhibit No. or letter
Complaint, filed February 25, 1939, as amended March 14, 1939	1
Exhibits to Complaint:	
Notice of hearing before Public Contracts Board	A
Report of Public Contracts Board	B
Petition for reopening of hearing before Public Contracts Board	C
Exceptions to Report of Public Contracts Board	D
Determination, dated January 16, 1939	E
Order postponing effective date of Determination	F
Base rates for common labor	G
Order granting leave to amend Complaint, filed March 14, 1939	2
Motion for preliminary injunction, filed February 27, 1939	3
Affidavits in support of preliminary injunction:	
Darwin S. Wolcott, filed February 25, 1939	4
John W. Logan, filed February 25, 1939	5
Francis J. Tucker, filed February 25, 1939	6
Henry S. Evans, filed February 25, 1939	7
Wilbert Wear, filed February 25, 1939	8
J. A. Downey, filed February 25, 1939	9
Marjorie Wilford, filed February 25, 1939	10
Henry S. Evans, filed March 7, 1939	11
John W. Logan, filed March 7, 1939	12
Fred W. Morrison, filed March 8, 1939	13
Darwin S. Wolcott, filed March 9, 1939	14
James A. Downey, filed March 13, 1939	15
John W. Logan, filed March 13, 1939	16
John W. Logan, filed March 13, 1939	17
Affidavits opposing preliminary injunction:	
Edward J. Ennis, served March 6, 1939	18
M. L. Ring, served March 6, 1939	19
Temporary restraining order, filed February 28, 1939	20
Order making of record extensions of temporary restraining order, filed March 14, 1939	21
Order setting cause down for final hearing, filed March 1, 1939	22
Notice of motion for preliminary injunction, filed March 1, 1939	23
Order setting cause down for hearing on motion of defendants to dismiss Complaint, filed March 3, 1939	24
Motion of defendants to dismiss Complaint, filed March 6, 1939, and notice thereof	25
Order denying motion of Steel Workers Organizing Committee for leave to intervene and dismissing petition to intervene, filed March 14, 1939	26
Judgment dismissing Complaint, as amended, at the foot of which are noted certain exceptions of petitioners and their appeal, filed March 14, 1939	28
Petitioners' notice of appeal, filed March 14, 1939	28
Petitioners' assignment of errors, filed March 15, 1939	29

United States Court of Appeals for the District of Columbia

No. 3056

LUKENS STEEL COMPANY, A CORPORATION, ET AL., PLAINTIFFS-APPELLANTS

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, ET AL., DEFENDANTS-APPELLEES

United States Court of Appeals for the District of Columbia. Filed Mar. 18, 1939. Joseph W. Stewart, Clerk.

Appellees' objections to appellants' petition for an injunction pending appeal

PRELIMINARY STATEMENT

The Appellees respectfully object to any injunction or stay whatever pending determination of this appeal. Appellants propose a form of injunction (Schedule A annexed to petition) which enjoins the Appellees from enforcing the Minimum Wage Determination for the Iron and Steel Industry (hereinafter called the "Determination") made by the Acting Secretary of Labor pursuant to the authority of Public Contracts Act, not simply with respect to the Appellants as possible future bidders or possible future Government contracts for iron and steel products which Appellants may manufacture. The Appellants also seek to enjoin operation of the Determination even with respect to all of the possible bidders who are not parties to this action and who, for all that Appellants disclose, favor and desire the Determination tending to eliminate wages as an element in competition for Government contracts. They seek to enjoin operation of the Determination with respect to all possible Government contracts for the products of the iron and steel industry even though the possible future contracts may be for steel or iron products which the Appellants do not manufacture and in which they have no interest.

In *limine*, and before summarizing briefly the objections to the Appellants' contentions in support of an injunction pending appeal, the Appellees respectfully submit to this Court that, without now considering fully the many legal arguments on the merits now advanced by Appellants on this application and which will be considered on the determination of the appeal, no injunction whatever pending appeal should be granted solely for the reason that the Appellants' papers fail wholly to disclose facts of probable great and irreparable damage pending determination of the appeal. The Appellants refer to no specific Government contracts for iron or steel which are to be made before determination of this appeal but merely state generally that unissued invitations to bid, confidential until issued, will be issued "in the near future" (Petition, p. 16) and Appellants intend to bid thereon. There is no basis for an opinion that Appellants probably would obtain such profitable Government contracts pending determination of this appeal that great, imminent, and irreparable damage, a necessary condition for any relief pending appeal, is about to occur. The appeal will not be rendered moot if an injunction pending appeal is not granted. At the most Appellants possibly may lose Government contracts on which they might or might not make a profit.

For these reasons alone, in addition to the reasons set out more fully below, no injunction pending appeal should be granted.

STATEMENT OF PROCEEDINGS

The Public Contracts Act [Public No. 846, 74th Cong., 49 Stat. 2036, copy of which is attached, marked "Exhibit A"] provides that in every contract entered into by an agency of the United States for the manufacture or furnishing of materials, supplies and equipment in any amount in excess of $10,000 there shall be included, *inter alia*, a stipulation by the contractor that all persons employed in the performance of the contract will be paid not less than "the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries currently operating in the locality in which the materials or supplies are to be manufactured or furnished" [Section 1 (b)].

Pursuant to the authority of Section 1 (b) of the Public Contracts Act the Acting Secretary of Labor on January 16, 1939 made a determination of the minimum wages prevailing in various localities in the iron and steel industry. Appellants, all of whom are relatively small steel companies located within one of the six "localities" for which prevailing minimum wages were determined by the Acting Secretary of Labor, had notice of and participated in the hearings before the Public Contracts Board and subsequently had notice of and took exception to the recommendations made by the Public Contracts Board to the Secretary of Labor in respect of the prevailing minimum wages for the industry.

After the issuance of the Determination (which rejected in part the recommendations of the Public Contracts Board) by the Acting Secretary, Appellants requested an extension of the effective date of the Determination and their request in this respect was partially granted, the effective date being extended from January 31 to March 1, 1939. At no time have the Appellants sought to obtain administrative exemption from the order in accordance with the provisions of Section 6 of the Public Contracts Act.

On February 25, 1939, Appellants commenced this action. The complaint alleged in substance that the Acting Secretary of Labor erred in defining the "locality" within which the Appellants' plants are located, arguing that the term "locality" as used in Section 1 (b) of the Public Contracts Act is synonymous with "city, town, village, or other civil subdivision of the state": that, even conceding that the Secretary of Labor must exercise judgment and discretion in applying the term "locality", the Acting Secretary in this case failed to give adequate recognition to various relevant factors; that the effect of the Acting Secretary's construction of the statute was to require Appellants to pay a higher minimum wage than they would have been required to pay for work on government contracts if the statute had been properly construed; that three of the seven Appellants desired to bid on one or more of five designated Navy Department schedules for which invitations to bid had theretofore been issued; and that if the Determination were permitted to become effective, Appellants would not be able successfully to compete with their larger and more integrated competitors; and that they would

thereby be unable to obtain government contracts, to their irreparable injury.

It will be noted that Appellants' contention as to the proper construction of the word "locality" was specifically considered and rejected on grounds adequately stated in the Determination itself [pp. 4–10, inclusive; copy attached, marked "Exhibit B"]. It was there recognized that there is ample room for differences of opinion as to the precise boundaries of a particular "locality" and certain of the recommendations of the Public Contracts Board were rejected because of their failure to give adequate recognition to various relevant factors to be considered in defining the boundaries of particular "localities" within which prevailing minimum wages should be determined.

On the basis of the allegations in the complaint the Appellants requested a broad temporary restraining order to be followed by identical preliminary and permanent injunctions, in effect, setting aside and staying the operation of the Determination as to all bidders on all government contracts, whether or not such bidders were located in the same "locality" with the Appellants and whether or not such bidders objected to compliance with the Determination.

The District Court declined to grant such a broad temporary restraining order and instead, by the order dated February 28, 1939, restrained the Secretary of Labor and the Secretary of the Navy only until March 7, 1939 from giving effect to the Determination on any bids which might be submitted by the three Appellants who had indicated a desire to bid on any or all of four designated schedules on which it was alleged such Appellants desired to bid. The stay was continued orally from day to day on the argument of the Appellees' motion to dismiss the complaint and was dissolved upon determination of that motion on March 14, 1939. As was stated by the Appellants in the oral argument in the District Court on Appellees' motion to dismiss, Appellants did not in fact submit bids on any of the schedules covered by the temporary restraining order. Appellants allege that had they submitted bids, such bids would have been lower than the bid of the successful bidder on certain contracts. Appellants also state that their failure to submit bids under the protection of the temporary restraining order was due to the effect of the restricted order which was to create two classes of bidders—one, a favored class consisting of the three Appellants, the other, consisting of all other bidders who were still bound by the Determination—and that under such circumstances any contract which might be awarded to Appellants would be illegal.

It will be seen that the effect of the temporary restraining order granted by the District Court was equivalent to an administrative exemption which might be granted to Appellants under Section 6 of the Act. Appellants' position seems to be, however, that while an administrative exemption (for which they have not even made application) would create no illegal discriminations, the judicial ex-

emption granted by the District Court was less valid. After extensive oral argument, the District Court (Bailey, J.) sustained Appellees' motion to dismiss, stating orally from the bench that it did so, first, because it was extremely doubtful whether Appellants had any standing to sue at all, second, because it did not appear that the Determination, even assuming it to be erroneous, was so arbitrary or capricious as to warrant judicial interference with the executive branch of the government. Under these circumstances, the District Court declined to grant Appellants' request for a stay of the Acting Secretary's order pending the appeal, stating that it would not further interfere with the government and that Appellants would have to obtain such a stay, if at all, from this court.

ARGUMENT

Appellants have shown no good cause for an injunction pending appeal

I. Probable Success on Appeal

It is elementary that to justify granting a stay after final decree it must appear that there is a serious doubt as to the correctness of the District Court's decision, or stated differently, that Appellants will probably succeed on their appeal. Virginian Railway v. U. S. 272 U. S. 658, 672 (1926); Cotting v. K. C. Stockyards Co., 82 Fed. 850, 857. Clearly the requisite probability of success is absent in the present case.

A. The Court Is Without Power To Grant The Stay.

1. The relief requested—granting of a stay—calls for the exercise of an administrative power and not a judicial power. From the face of the pleadings, including the Determination which is made a part of the pleadings, it is apparent that the Determination which Appellants seek to have stayed is not an order. The Determination does not direct the Appellants to do anything or to refrain from doing anything. It is, in fact, a quasi-legislative finding and the damage apprehended by Appellants will result, if at all, not from the operation of the Determination but from the operation of the Public Contracts Act itself. The relation between the Determination and the Public Contracts Act is in no essential way dissimilar from the relation between the Interstate Commerce Commission's findings that a railroad was not a "street, interurban, or suburban electric railway" and the Railway Labor Act of 1934; or the relation between the Federal Power Commission's finding that "the interests of Interstate or foreign commerce would be affected" by the construction of a dam and section 23 (b) of the Federal Power Act, as amended. The situation is thus within the controlling principle of Shannahan v. United States, 303 U. S. 596, decided April 4, 1938; Carolina Aluminum Co. v. Federal Power Commission, 97 F. (2)

435 (C. C. A., 4, 1938): Newport Electric Corporation v. Federal Power Commission, 97 F. (2) 580 (C. C. A., 2, 1938).

Appellant is requesting this Court to grant a stay which will have the effect of permitting appellant to bid for Government business on minimum terms different from those which have been prescribed by the administrative agency provided for by the Public Contracts Act. Thus it is clear that the real reason why the Court lacks the power to grant a stay order in this case is that the relief requested calls for the exercise of an administrative power and not a judicial power.

Clearly, this Court would not grant the relief requested by this stay as a final disposition of this case. To do so would be a useless thing. The Court could hardly set aside the Determination and remand the case, as was done by the District Court in United States & Interstate Commerce Commission v. Griffin, 303 U. S. 226, 58 S. Ct. 601, to take "such further action in the premises as the law requires in view of the annullment and setting aside of" the findings. Such a situation would leave the controversy oscillating between the Secretary of Labor and the Court indefinitely or until such time as the Court might surrender its judgment for that of the Secretary of Labor, or the Secretary of Labor might surrender his judgment for that of the Court. It is clear, therefore, that unless the Court is prepared to go further and itself make what it deems to be a proper finding, it should not set aside the finding made by the administrative agency provided for by the Public Contracts Act. If the Court has no jurisdiction to set aside the Determination as a final disposition of this case, it clearly has no jurisdiction to grant the requested stay.

2. The Public Contracts Act Does Not Authorize Judicial Review of The Determination.

Nothing in the Public Contracts Act itself confers jurisdiction upon the Court to review minimum wage determinations of the Secretary of Labor. Section 5 of the Act may be said to contemplate judicial review of certain types of "findings" of the Secretary of Labor. But the "findings" which section 5 of the Act says shall be conclusive in any Court if supported by a preponderance of the evidence are findings in respect of breaches or violations of the representations and stipulations provided for by section 1. Such findings, of course, would be made in respect of particular persons and would provide the basis of affirmative action (for example, by way of blacklisting) by the Secretary of Labor. But section 5 does not relate to "determinations" of prevailing minimum wages under section 1. And, indeed, to so construe section 5 would render the general provisions of section 4 (granting the Secretary of Labor power to make investigations and findings) mere surplusage, a construction to be avoided.

Thus, nothing in the Public Contracts Act itself alters the fundamental and well recognized principle that the Courts have no

jurisdiction to review and set aside findings or determinations, as distinguished from *orders* which direct persons to act or to refrain from acting.

B. Appellants Have No Standing To Sue.

Even assuming that the Determination is subject to judicial review, Appellees contend that under elementary principles of law judicial review of the Determination may be obtained only if the Determination interferes with some legally protected right of the Appellants and that the Appellants in the present proceeding being merely prospective bidders on government contracts, have no legally protected right which might be interfered with by the Determination. Alabama Power Co. v. Ickes, 302 U. S. 464; Heim v. McCall, 239 U. S. 175; B. F. Cummins Co. v. Burleson, 40 App. D. C. 500.

C. The Complaint Fails To State A Cause of Action In Equity.

Appellees further contend that, even assuming the existence of a legally protected right which might be interfered with by the Determination, Appellants have no standing to invoke the equitable jurisdiction of the Court.

1. There is no showing of great, immediate, certain, and irreparable damage to the Appellants as a result of the enforcement of the Determination. Indeed, there is not and can not be a showing of any damage whatsoever; Appellants allege that if they were to bid on Government contracts, and if they were to become low bidders, they would make a profit on the business. There is no allegations as to how much profit they would make.

2. Appellants do not even allege that they have diligently pursued and exhausted their administrative remedies.

3. The functions of the Secretary of Labor under the Public Contracts Act involve the exercise of judgment and discretion and, even though wrong, the Determination in this case is not so arbitrary or capricious as to warrant judicial interference with the executive branch of the Government in the administration of a Congressional statute.

Appellees' Points and Authorities and Supplemental Points and Authorities in support of their motion to dismiss the complaint briefly discussing the application of such Points and Authorities to the instant case, are attached hereto marked Exhibit "C." Apellees respectfully submit that their memorandum clearly demonstrates the improbability of the Appellants' success on this appeal. Appellants have cited no authorities *contra* and have not attempted to distinguish the authorities relied upon by Appellees.

II. There Is No Showing That Appellants Will Suffer Great, Immediate, Certain, Irreparable Injury If The Stay Is Not Granted

While a stay is not a matter of right, even if irreparable injury might otherwise result to Appellants (Virginian Railway Co. v. U. S., supra; In Re Haberman Mfg. Co. 147 U. S. 525), it is elementary

that such a showing is a necessary prerequisite to the granting of a stay. That Appellants will not suffer such irreparable injury as to warrant the granting of the stay is indicated by the fact that Appellants have in fact not even submitted bids on the contracts specifically covered by the temporary restraining order granted by the District Court relieving three of the Appellants from compliance with the Determination in question. This failure to bid, when they had opportunity to do so under the protection of the temporary restraining order, indicates that the Appellants' loss of government business is not a matter of vital concern. In their petition, Appellants cite numerous contracts which have already been awarded but so far as contracts which may be awarded between the present date and the date of the disposition of the appeal, they state only that invitations to bid will be issued "in the near future." [Petition, p. 16.] Such allegations are too remote and conjectural to sustain the conclusion that the Appellants will suffer great, immediate, certain, and irreparable injury if the stay is not granted.

III. A Stay, if Granted Would Not Maintain the Status Quo But Would in Effect Grant the Appellants Relief on the Merits

A stay of the Determination for even a limited period of 60 days would in no way preserve the status quo. On the contrary, it would mean that the public and the workers in the iron and steel industry who would otherwise benefit by the minimum wage requirements of the Determination would be irrevocably denied its benefits on any contracts which might be awarded during the period of the stay. Only if the government's national defense program, itself, and the purchasing program implementing it are suspended pending the hearing and determination of this appeal, can the status quo of this Determination be preserved.

IV. Stay Pending Appeal Should Be Denied Where the District Court Has Dismissed the Bill for Want of Jurisdiction.

In the present case, Appellees' motion to dismiss the complaint was sustained by the District Court on the ground of lack of jurisdiction. The Court expressed the view that it strongly doubted Appellants' standing to sue at all and that in any case the Determination in question is not so arbitrary or capricious as to warrant a court of equity in taking jurisdiction. Under these circumstances the District Court declined to grant the stay, and this Court likewise should not grant the requested stay of the order pending the appeal from the dismissal on jurisdictional grounds. Corona Coal Co. v. Southern Ry. Co., 266 Fed. 726, 735 (N. D. Ala. 1920).

V. The Granting of a Stay Would Cause Great and Irreparable Injury to the Public at Large and to Iron and Steel Workers Who Would Otherwise Receive the Benefits of the Determination.

A. Stay of the minimum wage Determination will in effect permit government contractors to pay any minimum wages they may please. Yet Congress, by the Public Contracts Act, has provided that government contractors should be required to pay at least the minimum wages determined by the Secretary of Labor to be prevailing minimum wages in the locality in which the supplies are to be manufactured. The effect of granting the stay would thus be to suspend the operation of the Congressional statute. Such a suspension is itself a grave and irreparable injury to the public. Dreyfoos v. Edwards, 284 Fed. 596 (S. D. N. Y. 1919) per Learned Hand, J; Cunard v. Mellon, 284 Fed. 890, 898, (S. D. N. Y. 1922), per Learned Hand, J.

B. Furthermore, the granting of the stay would result in irreparable loss to the several thousand workers in the iron and steel industry now receiving less than the prevailing minimum wage as determined by the Acting Secretary of Labor and who would, but for this stay, receive the higher minimum wage found by the Determination. No bond conditioned in favor of the Appellees can adequately protect the workers thus subjected to loss. L. & N. Ry. Co. v. R. R. Commission, 208 Fed. 35, 60 (M. D. Ala. 1913).

VI. Great Weight Should be Given to Refusal of the District Court to Grant a Stay

The District Court had opportunity to and did examine and hear arguments on the jurisdictional questions and on the merits and, after hearing oral argument during four days, not only sustained Appellees' motion to dismiss the complaint, but denied Appellants' request for a stay of the Determination pending the determination of the appeal. That court was in a position to estimate the probability of Appellants' success on the appeal and also to determine whether or not the balance of convenience requires stay of the Determination. This it declined to do and its action should be given great weight by this Court. An extraordinary showing should be required before this Court grants a stay. Cumberland Telephone Co. v. Commission, 260 U. S. 212, 219 (1922); Magnum Co. v. Coty, 262 U. S. 159, 164 (1922).

SCOPE OF ANY INJUNCTION PENDING APPEAL

I. If the Court should, in the exercise of its discretion, determine to grant Appellants' request for a stay, the stay should be limited, as was the temporary restraining order granted by the District Court, to staying the operation of the Determination only as to such of these Appellants as indicate at least a bona fide intention to bid on government contracts and should further be restricted to specific contracts upon which Appellants propose to bid.

II. If a stay is granted a bond should be required conditioned in favor of the Secretary of Labor, as provided in Section 2 of the Public Contracts Act, for the amount of the difference between the minimum wages actually received by workers on any government contracts which the Appellants may obtain and the amount which such workers would have received pursuant to the minimum wage Determination of the Acting Secretary of Labor.

Clearly a bond conditioned as provided in Rule 65 (c) of the Federal Rules of Civil Procedure would not protect the workers who would be denied the benefits of the Acting Secretary's minimum wage determination. Appellees, as such, would suffer no especial injury as the result of the granting of the stay. The persons who will suffer injury are the workers who will be denied the benefits of the minimum wage determination and Appellants' competitors.

CONCLUSION

Appellees respectfully submit that Appellants' application for a stay of the determination in the matter of the prevailing minimum wages in the iron and steel industry should be denied.

EDWARD J. ENNIS,
Attorney for Appellees.

EDWARD J. ENNIS,
Attorney, Department of Justice.
CHARLES EDWARD RHETTS,
Associate Solicitor, Department of Labor,
Of Counsel.

Receipt of copy of foregoing Objections acknowledged March 18, 1939.

_____,
Attorneys for Appellants.

Exhibit C

In the District Court of the United States for the District of Columbia

Civil Action File No. 1839

LUKENS STEEL COMPANY, A CORPORATION, ET AL., PLAINTIFFS

v.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, ET AL., DEFENDANTS

Points and authorities on motion to dismiss

I. This Court lacks jurisdiction of the subject matter of this action and the complaint fails to state a claim upon which any relief can

be granted, and this action and the complaint should be dismissed because the complaint discloses no legally protected right of any of the plaintiffs entitling any of them to maintain this action.

A. This action and the complaint should be dismissed unless the complaint discloses legally protected rights of the plaintiffs with which the defendents are interfering or threatening to interfere.

Frothingham v. Mellon, 262 U. S. 447, 486–489, affirming 288 Fed. 252 (App. D. C.).

Alabama Power Company v. Ickes, 302 U. S. 464, affirming 94 F. (2d) 303 (App. D. C.), reversing LXIV Wash. L. R. 563.

Duke Power Co. v. Greenwood Co., 302 U. S. 485.

Tennessee Elec. Power Co. v. Tennessee Valley Authority, 305 U. S. —, 59 S. Ct. 366, No. 27, January 30, 1939.

Railroad Co. v. Ellerman, 105 U. S. 166.

Wallace v. Ganley, 95 F. (2d) 364 (App. D. C.).

B. The plaintiffs, as prospective government contractors, have no legally protected rights with which defendents are threatening to interfere.

1. The United States, like one of the States, has complete power to provide conditions and regulations for government contracts.

Ellis v. United States, 206 U. S. 246.

Atkin v. Kansas, 191 U. S. 207.

Heim v. McCall, 239 U. S. 175.

2. The statutory regulation of government contracts is intended solely for the protection of the United States and not for prospective contractors.

American Smelting & Refining Co. v. United States, 259 U. S. 75, 78.

United States v. New York Porto Rico S. S. Co., 229 U. S. 88, 93.

3. Prospective government contractors have no standing to question conditions imposed by the Government. They lack not merely the right to bring a particular form of action but also any legally protected right entitled to any relief whatever.

W. Ames & Co. v. Wallace, et al. (reported in 1 S. C. D. C. (N. S.) 238, Supreme Court of the District of Columbia. February 1, 1935, Eq. No. 57,796). (Affirmed, 81 F. (2d) 414 (App. D. C.).)

The Northwest Motor Co. v. Wallace, et al. (No opinion, decree dismissing complaint by the Supreme Court of the District of Columbia, May 25, 1934, Eq. No. 57,189, LXII Wash. Law Rep. 425).

O'Brien v. Carney, 6 F. Supp. 761 (D. C. Mass., 1936).

Colorado Paving Co. v. Murphy, 78 Fed. 28 (C. C. A. 8th); appeal dismissed for want of jurisdiction, 166 U. S. 719.

United States Wood Preserving Co. v. Sundmaker, 186 Fed. 678 (C. C. A. 6th).

B. F. Cummins Company v. Burleson, 40 App. D. C. 500. See also Molloy v. New Rochelle, 198 N. Y. 402, 92 N. E. 94. Talbet Paving Co. v. Detroit, 109 Mich. 657; 67 N. W. 979.

II. This action and the complaint, seeking an injunction, should be dismissed because the complaint fails to state any facts entitling the plaintiffs to any relief in equity or to any injunctive relief.

A. The complaint of mere prospective bidders fails wholly to allege the particular facts disclosing imminently threatening, great, immediate, certain and irreparable pecuniary damage to property necessary to state a cause of action for an injunction.

Hegeman Farms Corp. v. Baldwin, 293 U. S. 163, 170, affirming 6 F. Supp. 297 (S. D. N. Y.).

California v. Latimer, et al., No. 13, Original, October Term, 1938, decided December 5, 1938.

W. Ames & Co. v. Wallace, et al., supra.

B. Insufficient facts are alleged to disclose a threat of immediate enforcement of the determination of the Secretary of Labor against the plaintiffs by the defendants.

California v. Latimer, et al., supra. Ex parte La Prade, 289 U. S. 444, 458.

Champlin Rfg. Co. v. Commission, 286 U. S. 210, 238.

C. The complaint fails to allege that the plaintiffs have exhausted their administrative remedies.

Myers v. Bethlehem Corp., 303 U. S. 41, 51.

Hegeman Farms Corp. v. Baldwin, 293 U. S. 163, 172.

P. F. Petersen Baking Co. v. Bryan, 290 U. S. 570, 575.

Red River Broadcasting Co. v. Federal C. Commission, 98 F. (2d) 282 (App. D. C.).

III. The complaint, insofar as it seeks a declaratory judgment, should be dismissed.

A. The complaint does not state a justiciable case or controversy within the meaning of the Declaratory Judgment Act.

Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, Electric Bond Co. v. Comm'r, 303 U. S. 419, 443.

B. As a matter of judicial discretion a declaratory judgment should be denied.

Aetna Casualty & Surety Co. v. Charles, 92 F. (2d) 321 (C. C. A. 4th).

IV. The complaint should be dismissed because this is a suit against the United States which has not consented to be sued.

Wells v. Roper, 44 App. D. C. 276; 246 U. S. 335.

Naganab v. Hitchcock, 25 App. D. C. 200, 202 U. S. 473.

United States ex rel. Goldberg v. Daniels, 231 U. S. 218.

Louisiana v. McAdoo, 234 U. S. 627.

Belknap v. Schild, 161 U. S. 10.

Oregon v. Hitchcock, 202 U. S. 60.

Turner v. United States, 248 U. S. 354.

Morrison v. York, 266 U. S. 481.

Coumes & Rappis v. Perkins et al., memorandum decision dated December 31, 1937 (D. C. Dist. Columbia), Bailey J.

In the United States Court of Appeals for the District of Columbia

Original No. 3056

LUKENS STEEL COMPANY ET AL., PETITIONERS-APPELLANTS

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, ET AL., RESPONDENTS-APPELLEES

United States Court of Appeals for the District of Columbia. Filed Mar. 22, 1939. Joseph W. Stewart, Clerk.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss.

John W. Logan being duly sworn upon his oath deposes and says:

I am the Secretary and Treasurer of Alan Wood Steel Company (hereinafter called the "Company"), one of the petitioner-appellants in the above entitled action. The company is engaged in the production and sale of certain products of the iron and steel industry.

Invitations to bid were issued on a proposed contract 33119-A Schedule 1, by the Reclamation Bureau at Denver, Colorado, of the Department of the Interior, for approximately 475 tons of steel plates. The bids on said invitations were opened on February 6, 1939. The Company bid on such steel plates.

On or about March 6, 1939 the Company received the following telegram from the aforesaid Reclamation Bureau:

"Re your bid under invitation 33119-A Schedule One, advise immediately if you will accept Department of Labor wage determination for iron and steel industry dated January 16, 1939 and effective March 1, 1939, as a part of contract if awarded to you.

RECLAMATION BUREAU."

In reply thereto the Company sent the following telegram to said Reclamation Bureau on March 7, 1939:

"RECLAMATION BUREAU,
Denver, Colo.

Retel sixth our quotation bid February sixth predicated labor rates in effect at the time. Regret are not willing accept Department of Labor wage Determination as we are participating in action now pending in court seeking permanent injunction against this determination.

ALAN WOOD STEEL CO."

On or about March 10, 1939, said invitations to bid were reissued on said proposed contract 33119-A Schedule One by the said Reclamation Bureau of the Department of the Interior for the aforesaid quantity of steel plates and said invitation required that each bidder thereon agree to comply with the Department of Labor wage

Determination for the iron and steel industry which became effective March 1, 1939, if said contract be awarded to it.

The bids on said reissued invitations were opened March 20, 1939.

The Company desired to bid on said reissued invitation and would have done so had it not been for the fact that said bid and any contract awarded to it would have been subject to the aforesaid wage Determination. The Company did not bid thereon solely because of said Determination.

JOHN W. LOGAN.
John W. Logan.

Sworn to and subscribed before me this 21 day of March 1939.
[SEAL] ETHEL F. ALLEN,
Notary Public.

My commission expires August 2, 1942.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

George W. Witney, being duly sworn, deposes and states that he is an attorney with offices at 2004 Finance Building, 1428 South Penn Square, Philadelphia, Pennsylvania, and that he is a member of the bar of Philadelphia County, Pennsylvania.

He further deposes and states that he is general counsel for South Chester Tube Company, a Pennsylvania corporation having its principal office at Chester, Pennsylvania. He further deposes and states that attached hereto is a true and accurate copy of an agreement entered into under date of April 6, 1938, by and between the South Chester Tube Company and the United Tube Workers Lodge No. 184 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, which organization acts as a collective bargaining agency for the employees of the Company.

He further deposes and states that the said agreement was drawn and executed under his supervision on behalf of the Company and that the said agreement superseded an agreement dated May 12, 1937, which was entered into by said Company and the Steel Workers Organization Committee on behalf of members of the same lodge.

He further deposes and states that Mr. Thomas G. Gillis who signed the agreement as District President of the Amalgamated Association of Iron, Steel and Tin Workers of North America represented himself to be a representative of the American Federation of Labor.

In witness whereof he has hereunto attached his signature this 21st day of March, 1939.

GEORGE W. WITNEY.

Sworn and subscribed to before me, a Notary Public in and for the State of Pennsylvania this 21 day of March, 1939.

REGINA L. HOEY,
Notary Public.

My commission expires Feb. 14, 1941.

Agreement Between the South Chester Tube Co. and United Tube Workers Lodge, No. 184, Pa., Amalgamated Association of Iron, Steel and Tin Workers of North America

Entered into the 6th day of April 1938

SOUTH CHESTER CO.—UNITED TUBE WORKERS LODGE NO. 184, PA.

Agreement

This agreement, dated April 6th, 1938, is entered into between the South Chester Tube Company (hereinafter known as the Company) and United Tube Workers' Lodge No. 184, of the Amalgamated Association of Iron, Steel and Tin Workers of North America (hereinafter known as the Union).

It is the intent and purpose of the parties hereto that this agreement will promote and improve industrial and economic relationships between those employees of the Company who are members of the Union, and that it will set forth the basic agreement covering rates of pay, hours of work, and conditions of employment to be observed between the parties hereto during its existence.

The term "employers," as used in this agreement shall not include Foremen, Assistant Foremen, or Supervisors in charge of any classes of labor, or Watchmen or any salaried employees.

I. Recognition.—The Company recognizes Local No. 184 of the Amalgamated Association of Iron, Steel and Tin Workers of N. A. as the collective bargaining agency for those employees of the Company who are members of the Union. The Company recognizes and will not interfere with the right of its employees to become members of the union. There shall be no discrimination, interference, restraint or coercion by the Company, or any of its agents against any employee because of membership in the Union. Employees shall have the right to transact Union business on Company property but not during working hours nor on days when they are not regularly employed.

II. Wages.—The present basic wage scale established by the Company March 16, 1937, shall remain in force so long as this agreement shall remain in effect, provided, however, should there be any general increase or decrease in the basic wage scales in the Steel Industry in the district in which the Company is located the Company will change its basic wage scale to conform therewith.

III. Hours.—Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work, made up of five (5) eight (8) hour shifts, worked on consecutive days. (a) Time and one-half time shall be paid for all over eight (8) hours in any one (1) day or for all over forty (40) hours in any one week. (b) Any employee called back to work after completing his regular eight (8) hour shift within any twenty-four (24) hour period shall be guaranteed a minimum of four (4) hours at the rate of time and one-half.

IV. Grievances.—Should differences arise between the Company and the Union or its members employed by the Company as to the meaning and application of the provisions of this agreement, or should any local trouble of any kind arise in the plant, there shall be no suspension of work or interference with the regular routine business on account of such differences, but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between the aggrieved employee and the foreman of the department involved.

Second, between a member or members of the shop committee, designated by the Union and the Superintendent of the plant.

Third, between the representatives of the National Union and the Shop Committee and the executives of the Company; and

Specified periods shall be agreed upon between the shop committee and the plant superintendent for the presentation of grievances hereunder. Provided, however, that matters pertaining to discharges or other matters that cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Shop Committee shall consist of not more than one employee from each department selected by the Union who will be afforded such time off without pay as may be required:

1. To attend regularly scheduled committee meetings.

2. To attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting.

3. To visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Union.

V. Seniority.—It is hereby agreed that seniority rights shall prevail. During layoffs employees with the longest service shall be laid off last on the basis of seniority and skill in the order stated. Those already employed shall be advanced to better paying operations on the basis of seniority and skill.

VI. Safety and Health.—It is hereby agreed that the Company recognizes the importance of increasing safety provisions in the plant for the protection of the health, life and limb of employees and that the Management will make every effort to improve such conditions when called to its attention. Heating, lighting, toilet and locker facilities shall be subject to review under Clause IV of this agreement.

VII. Vacations.—One week's vacation with pay at their prevailing hourly rate shall be granted all employees with two years' service or more on June 1, 1938. Vacations shall be assigned by the Management to take place between the period of May 1st and November 1st unless the plant is shut down for a vacation period.

VIII. Holidays.—The following shall be observed as holidays: Easter Monday, Decoration Day, July 4th, Labor Day, Thanksgiving Day, Christmas. Time and one-half shall be paid for work on holi

days to all employees other than "stand-by" men, Boiler Firemen and Pipe Fitter "stand-by" men shall receive time and one-half for July 4th, Labor Day and Christmas.

This agreement shall be in force until June 30, 1939, unless it be mutually agreed in writing at least thirty (30) days before expiration, that it be extended, in which event it shall be extended for such period or periods as may be mutually agreed upon.

South Chester Tube Co., George W. Sweet, General Superintendent. Amalgamated Association of Iron, Steel and Tin Workers of N. A., by Thomas G. Gillis, District President. United Tube Workers' Lodge, No. 184, by John J. Malick, President, Jacob Melnick, Secretary. Committee: Nicholas Tuozzo, H. K. Meyers, John M. Rogal, A. E. Strickler, Richard Arscott, Jr., Bernie Buck, J. M., Frank Blisard, Jr.

The Amalgamated Press.

Officers for 1938—President, John J. Malick; Vice President, Bernard Buck; Recording Secretary, Jacob Melnick; Treasurer, Gilbert Brown; Financial Secretary, Wm. Cavanaugh; Guide, George Popko; Inside Guard, Peter Penkowski; Outside Guard, Michael Stahurski; Journal Agent, Irwin Reist; Cor.-Rep., Nicholas Tuozzo.

Trustees—John O. Smith, Harry Killian, Wm. Grasty.

Mill Committee for 1938—Mechanical Department—Michael Tuozzo.

Welding Department—H. K. Meyers, Frank Blisard, Jr., A. E. Strickler.

Cutting Department—John Rogal, Michael Kriko, Wm. Grasty.

Inspection Department—Richard Arscott, Jr., John Shea.

Meetings—Held on the second and fourth Saturdays of each month with exceptions during the following months: June, July and August, when meetings are held every fourth Saturday. Meetings start at 2 P. M. sharp.

Wednesday, March 22nd, A. D. 1939

* * * * *

No. 3056 Original

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, ET AL., PETITIONERS

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. McLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALF WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL.

The argument on petition for temporary injunction in the above entitled cause was commenced by Mr. Frederick H. Knight, attorney

for petitioners, continued by Messrs. O. Max Gardner, attorney for petitioners, and Edward J. Ennis, attorney for respondents, and concluded by Mr. Frederick H. Knight, attorney for petitioners.

On motion of Mr. Lee Pressman for leave of Steel Workers Organizing Committee to intervene, counsel allowed to file brief. Mr. Lee Pressman and Mr. Joseph Kovner were introduced to the Court by Mr. Sydney B. Smith.

* * * * * *

United States Court of Appeals for the District of Columbia

No. 3056 Original. January Term, 1939

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, ET AL., APPELLANTS

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALF WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL.

United States Court of Appeals for the District of Columbia. Filed Mar. 27, 1939. Joseph W. Stewart, Clerk.

ORDER

On the petition for a temporary injunction pendente lite.

In view of the importance of the question for decision on appeal in this cause, it is ordered by the Court that the cause be advanced on the docket of this Court and set down for argument at 10 o'clock, A. M., April 3, 1939.

The Court having considered the petition for an injunction pendente lite, and being of opinion that sufficient cause therefor has been shown,

It is ordered by the Court that an injunction pendente lite be, and is hereby, granted against the appellees, and each of them, enjoining them, and each of them, until the further order of the Court, from continuing in effect the Determination made under date of January 16, 1939, by appellee McLaughlin, as Acting Secretary of Labor, pursuant to "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes," approved June 30, 1936, in the matter entitled "In the Matter of the Determination of the Prevailing Minimum Wages in the Iron and Steel Industry."

Dated March 27, 1939.

PER CURIAM.

Judge Edgerton is of opinion that an injunction pendente lite should not issue.

United States Court of Appeals for the District of Columbia

No. 3056 Original

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, ET AL., APPELLANTS

v.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALF WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL.

United States Court of Appeals for the District of Columbia. Filed Mar. 29, 1939. Joseph W. Stewart, Clerk.

Motion for reargument or a more specific injunction and security

The appellees respectfully move this Court (I) for oral reargument forthwith of the appellants' motion for a temporary injunction pending appeal granted by the order of this Court filed March 27, 1939, and, in the alternative, for (II) oral argument in support of this motion for an order clarifying and stating the extent of the injunction which has been granted, and (III) determining the security for the injunction for the following reasons:

I. ORAL REARGUMENT

Oral reargument is sought on the grounds (1) that the appellants have not disclosed the great, immediate, and irreparable property damage essential for an injunction pending appeal after dismissal of the complaint and denial of an injunction pending appeal by the District Court; (2) that the damage to the public and to common laborers in the iron and steel industry by an injunction pending appeal enjoining enforcement of the Determination of the Acting Secretary of Labor, dated January 16, 1939, hereinafter called the Determination, will be great and irreparable and, balancing the conveniences, the injunction should be denied; and (3) that the improbability of the appellants' success on appeal requires that the injunction be denied.

1. The appellants have merely shown that one or more of them possibly may be prevented from obtaining government contracts pending appeal, unless they stipulate to pay the minimum wage fixed by the Determination. They have not shown that the possible loss of such possible contracts will result in the great, immediate, and irreparable property damage necessary for an injunction pending appeal, particularly after dismissal of the complaint and denial of a stay pending appeal by the District Court. They have not alleged that the conduct

of their business pending appeal depends upon obtaining government business. Their contention that contracts made pending appeal will or may be unlawful if the Determination eventually is determined to be invalid, is untenable.

2. The injunction pending appeal suspends the operation of an Act of Congress, the Public Contracts Act, in so far as that statute has been put into actual operation by the Determination. It is respectfully submitted that such an injunction logically must be based upon the assumption by this Court, or the decision of this Court before argument of the appeal, that the Determination is an abuse of the Secretary's discretion under the Public Contracts Act. It is most earnestly submitted that even if the appellees' written Objections to the petition for a temporary injunction pending appeal filed in this Court did not disclose, as we submit they do, that the Determination was clearly within the Acting Secretary's discretion, the assumption pending appeal should be that the Acting Secretary acted within the discretion granted by the Public Contracts Act and the question should be neither assumed nor decided against the Government before determination of the appeal. Pending decision on appeal whether (1) appellants even have a standing to sue and (2) whether, in any case, the courts have jurisdiction to review the Determination in this action, the balance of convenience requires that the public and the common laborers in the iron and steel industry should not be deprived of the operations of the statute and the Determination in order to protect the appellants' mere possibility of becoming low bidders and obtaining possibly profitable government contracts pending appeal. The presumption of legality of the acts of a superior official of the coordinate executive branch of the Government should protect the Determination, not alleged to be in bad faith, from an injunction pending appeal in this case.

3. For the reasons set forth in the appellees' Objections to the petition for an injunction it is submitted that it is improbable that the appellants will succeed on the appeal.

II. Clarification of Injunction

If oral reargument of the appellants' motion for an injunction be not granted it is submitted that the oral argument is necessary to clarify the injunction of this Court, filed March 27, 1939, and to obtain an order stating in specific terms the act or acts enjoined. The appellees in their Objections to the injunction and upon oral argument urged that if any injunction be granted it should be restricted to enjoining enforcement of the Determination against parties to this proceeding who may bid on Government contracts pending appeal and should not be extended to other bidders, not parties to this action, and who, for all that appears, may desire to abide by the Determination.

In view of the discussion of this question, it is not clear to the appellees, or to their attorneys who must advise them concerning the meaning and extent of the injunction, which is in general terms

not specifically determining this question, whether appellees are enjoined from continuing the Determination in effect even with respect to bidders not parties to this action. Moreover, in view of the most extraordinary character of any temporary injunctive relief to persons not parties to an action, whose equities do not appear, the appellees are slow to construe the general language of the injunction as meaning to reach this result.

Rule 65 (d) of the Federal Rules of Civil Procedure requires that every injunction "shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; * * *"

It is respectfully submitted that the injunction of this Court filed March 27, 1939, does not comply with Rule 65 (d), is general and is not "specific in terms," and does not "describe in reasonable detail" the acts to be enjoined in the following respects, among others:

1. The injunction does not disclose whether appellees are enjoined not only from future acts enforcing the Determination but are also required to recall and rescind former acts enforcing the Determination with respect to all advertised invitations for bids on government contracts already issued and now pending and requiring a stipulation to abide by the Determination. If the injunction affects such invitations to bid it may be necessary, with expense and delay, to readvertise such invitations to bid in order that all bidders may be on an equal basis. Some bidders may have already submitted bids agreeing to the prior enforcement of the Determination. Does the injunction merely require that any future bidder on the same contract need not agree to the Determination or does it require that prior enforcement of the Determination be rescinded by rejecting all pending bids and readvertising the invitations to bid?

These difficulties in interpreting the injunction are not legalistic and theoretical but practical and pressing. Representatives of the appellees, Secretary of War and Secretary of Navy, have already requested instructions whether the injunction requires readvertising of all pending invitations to bid. Captain Neal D. Franklin, Judge Advocate General's Department of the Army, has explained to the undersigned that officials of the War Department throughout the United States are empowered to advertise locally invitations to bid pursuant to general instructions including Procurement Circular No. 6, annexed hereto as Exhibit A, requiring a stipulation to abide by the Determination. Advice is requested whether a circular rescinding Circular No. 6 should require readvertisement of all invitations which may be outstanding requiring compliance with Circular No. 6.

Moreover, the injunction does not disclose whether compliance with the Determination is not required even under contracts now being performed which agree to the Determination.

2. The injunction contains no statement "specific in terms" to indicate that the appellees are enjoined from enforcing the Determination even with respect to persons, other than appellants, who are not par-

ties to this action and may wish to abide by the Determination. In view of the fact that this question was raised specifically it is submitted that the injunction should settle the question in specific terms and not require the appellees to interpret it at their peril. Any injunction should be restricted to parties to this action.

3. The injunction enjoins all appellees even though as to some of them, such as the Postmaster General, it does not appear that they are about to award contracts requiring a minimum wage stipulation pursuant to the Determination. The restraining order of the District Court (Exhibit 20 of the appellants' petition for an injunction pending appeal) was restricted to enjoining the Secretary of Labor and the Secretary of the Navy from refusing to accept any bids of three of the appellants on specified contracts about to be awarded by the Secretary of the Navy solely on the ground that the bids did not contain a stipulation agreeing to the Determination. It is submitted that any injunction pending appeal should be restricted to enjoining officers who, on facts presented by the appellants, are about to award contracts requiring a stipulation with respect to the Determination.

It is respectfully submitted that continuance of the injunction in its present terms is creating and will create confusion and uncertainty concerning its extent and operation. It is required that any injunction "shall be specific in terms; shall describe in reasonable detail * * * the act or acts sought to be restrained * * *." Rule 65 (d) of the Rules of Civil Procedure. Any injunction in this case should state in specific terms and in reasonable detail whether the appellees are restrained from continuing to enforce the Determination, not only against appellants but against all other persons and whether the injunction applies only to future advertisements for bids or applies to pending advertisements, requiring readvertisement, and to pending contracts. It is requested that an oral hearing be granted by this Court on the terms of the injunction.

III. Security for Injunction

The undersigned has been advised by the Clerk of this Court that appellants have not filed in this Court a surety bond or security for the injunction. The appellees' Objections to the injunction expressly requested, and the appellees again request, that if an injunction be continued or granted a bond should be required conditioned in favor of the Secretary of Labor, as provided in Section 2 of the Public Contracts Act, for payment of the amount of the difference between the minimum wage provided for in the Determination and the lesser minimum wages which may be paid. The laborers affected require this protection to avoid irreparable injury. Under Rule 62 (c) of the Federal Rules of Civil Procedure an injunction pending appeal may be granted "upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party." Under Rule 65 (c) "No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum

as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." In the present case laborers, particularly, who are not paid the minimum wage because of an injunction, will be irreparably damaged by any injunction and in justice and equity should be protected by adequate security required by this Court.

Furthermore, apart from security to be furnished by appellants, if any, injunction pending appeal will restrain enforcement of the Determination against bidders on future contracts other than the appellants, such other bidders should be required by the provisions of the injunction to provide a bond or other security conditioned upon payment of the minimum wages if appellants do not eventually succeed in this action.

Moreover, if any injunction pending appeal will apply to any pending contract, the injunction should provide that any contractor who fails to pay the minimum wages stipulated in the contract shall give a bond or other security to pay the minimum wages if the appellants do not eventually succeed in this case.

CONCLUSION

1. The appellees request oral reargument of the appellants' petition for an injunction pending appeal. It is submitted that the questions and practical difficulties involved in granting, interpreting, and complying with the general terms of the injunction filed March 27, 1939, set forth supra, disclose the necessity of further argument, to determine whether any injunction whatever should be granted.

2. Even if oral reargument be not granted on the question whether any injunction whatever should issue, oral argument is required to determine (a) whether any injunction should extend beyond bids by appellants upon any contracts awarded by any of the appellees before decision of the appeal and should extend to bidders other than appellants; (b) whether any injunction should extend to any invitations to bids already outstanding, requiring readvertisement of such invitations to bid; and (c) whether any injunction should extend to contracts already executed containing a stipulation to pay minimum wages.

3. Moreover, oral argument is necessary on the question of security, absolutely required for any injunction, to determine (a) whether appellants should give a bond to pay the minimum wages if the appeal fails; (b) whether bidders other than appellants should give similar bonds if the injunction is to extend to them; and (c) whether contractors on pending contracts should give similar bonds if the injunction is to extend to them.

Wherefore, in the circumstances that the parties have not been heard on the question of the actual terms of the injunction order filed March 27, 1939, and prepared by the Court and not by the parties, oral argument is requested *forthwith* on the terms of the order and the security

to be given and oral reargument of the appellants' application for an injunction pending appeal is requested.

Respectfully submitted.

EDWARD J. ENNIS,
Edward J. Ennis,
Attorney, U. S. Dept. of Justice, Attorney for appellees.

March 29, 1939.

Copy received March 29, 1939.

(Signed) FRED W. MORRISON,
Attorney for appellants.

3:57 P. M.

Exhibit A

Procurement Circular No. 6. (Proc. Cir. 6.)

WAR DEPARTMENT,
Washington, February 28, 1939.

Special purchasing procedure under the Walsh-Healey Public Contracts Act.—Paragraph 7, Section III, Procurement Circular No. 3, War Department, 1938, is amended by adding subparagraph w thereto:

w. Iron and steel articles, effective March 1, 1939.—The Secretary of Labor, under date of January 16, 1939, has made prevailing minimum wage determinations with respect to products of the iron and steel industry pursuant to Section 1, Clause B, of the Public Contracts Act, approved June 30, 1936 (Chapter 881, 49 Stat. 2036). This determination covers only pig iron, iron or steel ingots, and rolled or drawn iron or steel products as hereinafter stated, and such fabricated iron or steel products as are specifically named but does not include any unspecified coated, insulated, forged, or cast items. The definition as formulated below describes the products of the iron and steel industry and the provisions thereof do not apply to any production in open hearth and electric furnaces other than that specifically enumerated.

Following is the wage determination of the Secretary:

I hereby determine (1) That the iron and steel industry is defined to mean and include the business of producing and selling all or any one or more of the following products:

Axles—rolled or forged.
Bale ties—single loop.
Bars—alloy steel, hot-rolled.
Bars—cold finished, carbon and alloy.
Bars—concrete reinforcing, straight lengths.
Bars, ingots, blooms and billets—iron.
Bars—merchant steel.
Bars—tool steel.
Ferromanganese and spiegeleisen.
Girder rails and splice bars therefor.
Ingots, blooms, billets and slabs—alloy.

Ingots, blooms, billets and slabs—carbon.
Light rails—60 pounds or less per yard—and splice bars and angle bars therefor.
Standard tee rails of more than 60 pounds per yard—and angle bars and rail joints therefor, or any of such products.
Mechanical tubing.
Pig iron—foundry, high silicon silvery, malleable, open hearth basic, Bessemer and high silicon Bessemer.
Pig iron—low phosphorus.
Pipe—standard, line pipe and oil country tubular products.
Plates.
Posts—fence and sign.
Railroad tie plates.
Railroad track spikes.
Sheet bars.
Sheets.
Skelp (wrought iron or steel strip for making tube).
Steel sheet piling.
Strip steel—cold-rolled.
Strip steel—hot-rolled.
Structural shapes.
Tubes—boiler.
Tube rounds.
Wheels—car, rolled steel.
Wire—drawn (bare).
Wire hoops—twisted or welded.
Wire nails and staples, twisted barbless wire, barbed wire, twisted wire fence stays and wire fencing (except chain-link fencing).
Wire rods.
Wire—spring.
Wire—telephone (bare).

(2) That the prevailing minimum wages for persons employed in the manufacture of furnishing of the products of the iron and steel industry are the amounts indicated for each of the following localities whether arrived at on a time or piece-work basis:

1. 45 cents per hour in the locality consisting of the States of Louisiana, Arkansas, Mississippi, North Carolina, South Carolina, Florida, Oklahoma, Texas, Alabama, Tennessee, Georgia, Virginia, and West Virginia, (except the counties of Hancock, Brooke, Ohio, Harrison, Monongalia, and Marshall);

2. 60 cents per hour in the locality consisting of the States of Washington, Oregon, and California;

3. 60 cents per hour in the locality consisting of the States of Montana, Idaho, Nevada, Wyoming, New Mexico, Utah, Colorado, and Arizona;

4. 58½ cents per hour in the locality consisting of the States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, and the area in and about East Saint Louis, Illinois.

5. 62½ cents per hour in the locality consisting of the States of Wisconsin, Illinois (except the area in and about East Saint Louis, Illinois), Michigan, and Indiana;

6. 62½ cents per hour in the locality consisting of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, and that portion of the State of West Virginia comprised within the counties of Hancock, Brooke, Ohio, Marshall, Harrison, and Monongalia, and the District of Columbia;

Provided that apprentices may be employed at lower rates if their employment conforms to the standards of the Federal Committee on Apprenticeship.

This determination shall be effective and the minimum wages hereby established for the respective localities shall apply to all contracts awarded subject to Public Act No. 846, 74th Congress, on or after March 1, 1939.

(A. G. 400.13 (2–18–39).)

By order of the Secretary of War:

MALIN CRAIG,
Chief of Staff.

Official:
E. S. ADAMS,
Major General,
The Adjutant General.

In the United States Court of Appeals for the District of Columbia

No. 3056, Original

LUKENS STEEL COMPANY, A CORPORATION, ET AL.,
PETITIONERS-APPELLANTS

v.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, ET AL., RESPONDENTS-APPELLEES

United States Court of Appeals for the District of Columbia. Filed Apr. 1, 1939. Joseph W. Stewart, Clerk.

Appellants' objections to appellees' motion for reargument or a more specific injunction and security

Appellants respectfully submit that the above motion should in all respects be denied.

Every issue presented by such motion, whether (1) under the prayer for reargument of appellants' petition for temporary injunction pending appeal, or (2) under guise of the requests for argument (a) on the terms of the temporary injunction issued by this Court on March 27, 1939, and (b) on security therefor, has already been fully

presented to the Court in the extensive oral argument granted by the Court and in the petition, memoranda in support thereof, and objections in opposition thereto.

Entirely aside from the fact that appellees have already been accorded every reasonable opportunity to present such issues, it is respectfully submitted that each thereof was properly decided by this Court.

1. *The request in the motion for a complete oral reargument.*

In support of this branch of their motion, counsel for appellees admittedly raise no new point. Each of the points presented was completely answered in oral argument and in the petition and the memoranda in support thereof. It is respectfully submitted, for reasons therein stated at length,[13] that the action of the Court in rejecting each such point was eminently correct.

2. *The request in the motion for reargument as to the terms of the injunction.*

While in form suggesting that the injunction granted is ambiguous in its terms, counsel for appellees is in effect seeking a reargument on an issue already fully argued orally and in the petition, memoranda in support thereof, and objections in opposition thereto, viz, the character of the injunctive relief to which appellants are entitled.

The injunction granted is plain, unambiguous and specific in its terms.[14] It enjoins "appellees, and each of them, * * * from continuing in effect the determination made under date of January 16, 1939, by appellee McLaughlin," etc. As pointed out to the Court in appellants' petition and memoranda and in oral argument, and as recognized by the Court by its order, this was the only type of injunction which would

(1) preserve the *status qua ante* the Determination and accord to appellants any real relief against the irreparable injury which would otherwise be inflicted upon them by the Determination and its enforcement;[15] and

(2) prevent the chaotic situation in the award of Government iron and steel contracts, and the monopoly in connection therewith, which were threatened.[16]

The order of the Court plainly commands appellee Perkins and her two subordinates to suspend the effectiveness of the Determination pending further order of this Court—a step which should have been

[13] For a more complete discussion of the points made by counsel for appellees, the Court's attention is respectfully directed to the petition and memoranda in support thereof, as follows:
(1) Irreparable injury—See Petition, pp. 5, 15–21; Open Memo., pp. 57–58; Reply Memo., pp. 2, 15–18.
(2) Balance of conveniences: (a) The alleged damage to the public—see Petition, pp. 5–6, 27–28; Open Memo., pp. 70–71; Reply Memo., pp. 1, 19–20; (b) Alleged damage to common laborers—see Petition, pp. 6, 8, 28; Reply Memo., pp. 20–24.
(3) Probability of success on appeal—See Petition, pp. 6–22; Open Memo., pp. 3–66; Reply Memo., 25–42.
See, also, the brief for appellants on the appeal (No. 7368) and the appendix thereto, now on file with this Court.

[14] Counsel for appellees suggests that Rule 65 (d) of the Rules of Civil Procedure for the District Courts of the United States applies to action by this Court. This is plainly not the case. But, in any event, the injunction issued by this Court fully accords with such rule.

[15] See Petition, pp. 5, 25–26; Open Memo., pp. 67–70; Reply Memo., pp. 43–44.

[16] See Petition, pp. 5–6, 27–28; Open Memo., pp. 67, 70–71; Reply Memo., pp. 1, 19–20.

taken voluntarily if for no other reason than the injury to the public interest threatened by a continuation of the effectiveness of the Determination,—and orders the other appellees to take the same action which they would have taken had the Secretary of Labor voluntarily suspended the effectiveness of the Determination as aforesaid.

This does not create a situation with which appellees are unfamiliar. As appears from paragraph 47 of the Complaint (Exhibit 1 to the Petition), appellee McLaughlin postponed the effectiveness of the Determination on January 30, 1939, one day before it was originally scheduled to become effective (Complaint, Par. 44). Invitations to bid on various contracts to be awarded after January 31, 1939, were then outstanding. It had been ruled by the Labor Department that such contracts were subject to the Determination. Consequently, the postponement of the effectiveness of the Determination created a situation parallel to that created by this Court's order requiring the Secretary of Labor to suspend the effectiveness of the Determination. Presumably the same departmental routine as was followed when the Acting Secretary voluntarily rendered the Determination ineffective may be followed now.

In any event, it is not the function of this Court to advise appellees on the minutiae of departmental routine to be followed in carrying out the plain and unambiguous order of the Court.

In the motion it is stated that there are "difficulties in interpreting the injunction"; but, it is respectfully submitted, that the only real difficulty is a reluctance to admit that this Court should have done what it did—that the Court meant what it said.

In so far as outstanding invitations to bid on contracts to be awarded in the future are concerned, the order of this Court makes it perfectly clear that no effect may be given to the Determination in connection with the award of such contracts. That is to say, these situations must be handled in exactly the same manner as they would have been handled had the Secretary of Labor voluntarily withdrawn the Determination. Consequently, appellee contracting officers are required by law to take (in the light of the circumstances of each particular case) such steps as are appropriate in order to comply with R. S. sec. 3709 which, as the Court will recall, requires competitive bidding, after advertising, on public contracts, and the award thereof to the lowest responsible bidder.

In the case of one such instance, with which counsel for appellants happen to be familiar, the Navy Department, on March 27, 1939, dispatched telegrams to prospective bidders on a contract on which bids were to be opened on March 29, 1939, stating that the Determination did not apply thereto.

It is most significant in this regard that the motion makes no mention of the number of such situations existing[16] and merely states

[16] Counsel for appellants know of only two such situations: (1) the proposed contract referred to in Exhibit 16 to the petition which should have been awarded to appellant Alan Wood, since bids thereon were opened on February 6, 1939 (Petition, p. 21), but which has been readvertised; and (2) a contract (Requisition No. 735, Bureau NSAF, dated February 23, 1939), for steel sheets, to be let by the Norfolk Navy Yard, Portsmouth, Virginia, on which bids are scheduled to be opened on April 3, 1939.

that "it *may* be necessary * * * to readvertise such invitations to bid in order that all bidders may be on an equal basis. Some bidders *may* have already submitted bids agreeing to the prior enforcement of the Determination."

In so far as contracts already awarded are concerned, the "difficulties in interpreting the injunction" are likewise nonexistent. The temporary injunction no more purports to affect such contracts than would a voluntary revocation by the Secretary of Labor of the Determination. The mere revocation of the Determination would not in any way affect such contracts. The question whether such contracts are invalid because the Determination is illegal [17] is a wholly different question, not created in any way by the injunction, but resulting from the refusal of the Secretary of Labor voluntarily to postpone the effective date of the Determination until its validity could be determined in this litigation.

Certainly, the doubt as to the legality of contracts let from March 1, 1939, to March 27, 1939, the date of this Court's order, which doubt has been created by the acts of the appellees, affords no basis for continuing the Determination in effect, in whole or in part, and thereby tainting with illegality every other contract to be let in the future.

From what has been said it is perfectly plain that counsel for appellees is really not concerned with the form of this Court's injunction, but with the *substance* thereof. However, if counsel would prefer a longer form of order, we would, of course, have no objection to the entry of an order in the form submitted by us as Schedule A to the petition which spells out with the greatest particularity what the Court has provided for in its order of March 27, 1939.

3. *The request for security on behalf of others than the appellees.*

Appellees request a bond "conditioned in favor of the Secretary of Labor, as provided in Section 2 of the Public Contracts Act, for payment of the amount of the difference between the minimum wage provided for in the Determination and the lesser minimum wages which may be paid." From the context, and since it is stated that the same request was made in appellees' objections to the petition, we understand that the bond which it is requested that the Court order appellants to post would apply to "any Government contracts which the appellants may obtain" (appellees' objections, p. 13).

This contention was rejected by the Court in its order of March 27, 1939, as it was by the District Court at the time of entry of its temporary restraining order.

To support the motion to reargue this question, counsel for appellees relies, for some unexplained reason, on Rule 65 (c) of the Rules of Civil Procedure for the District Courts of the United States, providing that "No such restraining order or preliminary injunction shall issue except upon the giving of security * * * in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrong-

[17] See Note 4, *supra*.

fully enjoined or restrained". It is difficult to comprehend how this Rule advances counsel's suggestion, since security is not requested on behalf of any one enjoined by the order of March 27, 1939, and since counsel has expressly conceded [18] that appellees "would suffer no especial injury as a result of the granting of the stay".

Appellees' counsel also refers to Rule 62 (c) of such Rules, which has no more pertinence than Rule 65 (c) and is, moreover, made expressly inapplicable to the action of this Court by Rule 62 (g), which states:

"The provisions in this Rule [62] do not limit any power of an appellate court * * * to stay proceedings during the pendency of an appeal or to sustain, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered; * * *."

The only basis advanced for the suggested bond is the conclusory statement that "laborers, particularly, who are not paid the minimum wage because of an injunction, will be irreparably damaged by any injunction." But, as pointed out in the detailed analysis set forth in appellants' Reply Memorandum (pp. 21–24), it is extremely doubtful that *any* employer affected by the Determination, not now paying the minimum wages fixed by the Determination, would bid upon and accept the award of any Government contract so long as the Determination remains in effect and the validity thereof is not settled, since to do so would be to agree to the unlawful Determination. Certainly appellants could not, since to do so would render their appeal moot (see Petition, p. 18; Reply Memo., p. 2). Consequently, there is no showing that any laborers will be irreparably damaged "because of" or "by any injunction."

Certainly, any damage is much more speculative than that involved in *Oklahoma Utilities Company* v. *Ickes et al.*, No. 6509, decided by this Court July 9, 1935 (see Reply Memo., p. 23). In granting its preliminary injunction pending appeal in that suit, and thereby enjoining a P. W. A. loan to a municipality for the purpose of constructing competitive utility facilities which, it was claimed, would afford cheaper power to the consuming public, this Court did not require any bond for the benefit of the municipality or the consuming public.

Moreover, to require appellants to post any such bond would be to place bidders for iron and steel contracts on different footings and therefore render such contracts illegal under R. S. sec. 3709. It is presumably because of recognition of this that counsel for appellees now suggests that the Court further order that all bidders, whether or not before the Court, be required to post similar bonds "conditioned upon payment of the minimum wages" prescribed in the Determination "if appellants do not eventually succeed in this action." How the Court could impose this unusual condition upon other bidders, however, is not explained.

---

[18] Appellees' Objections to the Petition, p. 13.

Passing by this insuperable obstacle, however, it is immediately apparent that the requirement that any such bond be posted by appellants would substantially defeat a principal object of the injunction. If such a bond were required, appellants, as a practical matter, in bidding under such circumstances, would be required to bid at prices sufficiently high to permit payment of the wages required by the Determination.[19] But if they bid at such prices, they will presumably be unable to compete successfully with large, fully integrated companies having plants in more favorable geographical positions in the West and South whose wage rates are not increased by the Determination.

Respectfully submitted.

O. MAX GARDNER,
O. Max Gardner,
ROBERTS B. THOMAS,
FREDERICK H. KNIGHT.
Attorneys for Petitioners-Appellants.

MARCH 31, 1939.

Service is hereby acknowledged this 1st day of April 1939 of a copy of the foregoing Objections.

EDWARD J. ENNIS.
Attorney for Appellees.

Tuesday, April 4th, A. D. 1939

* * * * * * * * *

Before Honorable JUSTIN MILLER, HENRY W. EDGERTON, and FRED M. VINSON, Associate Justices

* * * * * * * * *

No. 7368

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, APPELLANTS

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALFE WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL.

Mr. Charles Edward Rhetts, United States Department of Labor, member of the Illinois Bar, and Mr. John F. Budke, were introduced to the Court by Mr. Edward J. Ennis. Mr. Rhetts was allowed to argue on behalf of the appellees herein. Mr. Budke's motion for

[19] In this connection, it is to be borne in mind that an increase in the present minimum wages paid by appellants to common laborers employed in the performance of Government contracts would, from a practical standpoint, necessitate a corresponding increase in the wage rates for all classes of wage-earners employed, and all classes of work done, by appellants.

leave to file brief as amicus curiae on behalf of Parkersburg Steel Company was granted. Mr. Joseph Kovner was recognized by the Court for the purposes of this case.

Committee of Industrial Organizations was allowed fifteen minutes in argument herein in addition to one hour for the appellees; appellants were allowed additional time correspondingly.

The argument in the above-entitled cause was commenced by Mr. Frederick H. Knight, attorney for appellants, continued by Messrs. O. Max Gardner, attorney for appellants, Edward J. Ennis and Charles Edward Rhetts, attorneys for appellees, Joseph Kovner, attorney for Steel Workers Organizing Committee, Frederick H. Knight, attorney for appellants, and concluded by Mr. O. Max Gardner, attorney for appellants.

The argument in the above-entitled cause on the motion for reargument of the motion for a temporary injunction herein or an order clarifying and stating the extent of the injunction already granted, and determination of the security therefor, was commenced by Mr. Edward J. Ennis, attorney for appellees, and concluded by Mr. Frederick H. Knight, attorney for appellants.

* * * * * * *

United States Court of Appeals for the District of Columbia

No. 3056 Original

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, ET AL., APPELLANTS

v.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALFE WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL.

United States Court of Appeals for the District of Columbia. Filed Apr. 13, 1939. Joseph W. Stewart, Clerk.

Motion to dissolve temporary injunction pending appeal

Appellees respectfully move this court to dissolve any temporary injunction pending appeal herein, either forthwith or immediately upon any vote or decision of the members of this court to affirm the appeal heretofore argued herein and without awaiting preparation of any opinion of this court on such decision. The purpose of this motion is to obtain a dissolution of any temporary injunction pending appeal at the earliest possible moment upon any decision of

affirmance without awaiting the preparation of the opinion of this court.

Respectfully submitted.

(Signed) EDWARD J. ENNIS,
Edward J. Ennis,
Attorney for appellees.

APRIL 12, 1939.

Receipt of copy of above motion acknowledged.

(Signed) FRED W. MORRISON,
Attorney for Appellants.

April 13, 1939—11:45 A. M.

United States Court of Appeals for the District of Columbia

No. 7368

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, APPELLANTS

v.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALFE WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL.

Appeal from the District Court of the United States for the District of Columbia

Decided August 4, 1939

Roberts B. Thomas, of New York City, O. Max Gardner, of Washington, D. C., and Frederick H. Knight, of Philadelphia, Pennsylvania, for appellants.

Edward J. Ennis, of Washington, D. C., for appellees. (Charles E. Rhetts, of Washington, D. C., who is not a member of the bar of this Court, was recognized especially for the purposes of this case and permitted to argue on behalf of appellees.)

By leave of Court, Joseph Kovner, of Washington, D. C., filed a brief on behalf of Steel Workers Organizing Committee as amicus curiae.

By leave of Court, R. M. O'Hara, of Washington, D. C., filed a brief on behalf of The Andrews Steel Company, et al. as amicus curiae.

By leave of Court, John F. Budke, of Franklin, Pennsylvania, filed a brief on behalf of The Parkersburg Iron & Steel Company as amicus curiae.

Before MILLER, EDGERTON, and VINSON, Associate Justices.

PER CURIAM: This cause was specially set down for argument on the appellants' (plaintiffs') petition for an injunction against the above-named appellees (defendants) restraining them from continuing in effect a determination made under date of January 16, 1939, by Appellee McLaughlin, as Acting Secretary of Labor, pursuant to "An Act To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes.", approved June 30, 1936. We had previously granted an injunction pendente lite, which will be continued in effect.

The case was fully argued at the hearing and has been given due consideration. Justices Miller and Vinson are of opinion that the complaint states a valid cause of action entitling the plaintiffs to an injunction as prayed therein and, therefore, are of opinion that the District Court was in error in dismissing the complaint. The grounds of this court's opinion will be filed shortly, and Justice Edgerton will file a dissenting opinion. A judgment will thereupon be entered remanding the cause to the District Court, with instructions to set aside and vacate its previous order dismissing the complaint, and directing that court to proceed in accordance with the opinion of this court.

United States Court of Appeals for the District of Columbia

No. 7368

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION ET AL., APPELLANTS

v.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALFE WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL.

Appeal from the District Court of the United States for the District of Columbia

Decided October 3, 1939

Roberts B. Thomas, of New York City, O. Max Gardner, of Washington, D. C., and Frederick H. Knight, of Philadelphia, Pennsylvania, for appellants.

Edward J. Ennis, of Washington, D. C., for appellees. (Charles E. Rhetts, of Washington, D. C., who is not a member of the bar of this Court, was recognized especially for the purposes of this case and permitted to argue on behalf of appellees.)

By leave of Court, Joseph Kovner, of Washington, D. C., filed a brief on behalf of Steel Workers Organizing Committee as amicus curiae.

By leave of Court, R. M. O'Hara, of Washington, D. C., filed a brief on behalf of The Andrews Steel Company et al., as amicus curiae.

By leave of Court, John F. Budke, of Franklin, Pennsylvania, filed a brief on behalf of The Parkersburg Iron & Steel Company as amicus curiae.

Before MILLER, EDGERTON, and VINSON, Associate Justices.

MILLER, Associate Justice: In 1936, Congress enacted a statute [20] which, among other things, provides that "in any contract made and entered into by any * * * agency * * * of the United States * * * for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included * * *" five representations and stipulations, the second of which reads as follows: [21]

"That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the *locality* in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;" [Italics supplied.]

The complaint filed by appellants in the lower court alleged that on or about January 16, 1939, Appellee McLaughlin, purporting to act pursuant to the statute, issued a determination—in which Appellee Perkins actively participated, and which she authorized, approved and consented to—determining:

"(2) That the prevailing minimum wages for persons employed in the manufacture or furnishing of the products of the Iron and Steel Industry are the amounts indicated for each of the following *localities* whether arrived at on a time or piece work basis:

* * * * * * *

"6. 62½ cents per hour in the *locality* consisting of Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, and that portion of the State of West Virginia comprised within the counties of Hancock, Brooke, Ohio, Marshall, Harrison, and Monongalia, and the District of Columbia;" [Italics supplied.]

This determination was challenged in the lower court, and is challenged here, as void, beyond the authority of the Appellees Perkins and McLaughlin to make arbitrary and capricious, and wholly without warrant or authority of law; particularly in its employment of the

[20] Public Contracts Act, June 30, 1936, 49 Stat. 2036, 41 U. S. C. A. § 35 *et seq.* (Supp. 1938).

[21] 49 Stat. 2036, 41 U. S. C. A. § 35 (b) (Supp. 1938).

word *locality* to describe an area consisting of thirteen states, a portion of a fourteenth, and the District of Columbia as well. The challenge is well justified and the lower court erred in dismissing the complaint. The determination in this particular is not only unwarranted but incongruous.

It is true that the word *locality* is one of somewhat indefinite meaning.[22] Still, its indefiniteness has certain well recognized limits in common meaning and usage,[23] which exclude and forbid the interpretation placed upon the word by the appellees in their determination. It is true that within the proper limits of the meaning of *locality*, the Secretary is required by the statute to exercise judgment and discretion; but the determination in this case goes so far beyond any possible proper application of the word as to defeat its meaning and to constitute an attempt arbitrarily to disregard the statutory mandate. The rule therefore—that where the adoption of one of several possible interpretations of a doubtful statute involves the exercise of judgment and discretion, upon which the duty of an officer to perform a particular act depends, the courts cannot control the exercise of that discretion;[24]—has no application in the present case.[25]

Popular acceptance and usage accord to the word *locality* connotations of common interest and understanding, such as are revealed in the following expressions: Local self-government,[26] our local schools, local interests, a local concern,[27] local option,[28] local boy makes good, local items as used in newspapers, local prejudices, local talent.[29] Its meaning is suggested also by such terms as local anesthetic, and *location* as used in mining law,[30] and in motion picture parlance. In ordinary and common usage *locality* is synonymous in meaning with such words as *place*, *vicinity*, *neighborhood*, and *community*.[31] These words, also, are too indefinite to be used for purposes of exact measurement in terms of acres or square miles.[32] But neither they nor *locality*

---

[22] Connally v. General Construction Co., 269 U. S. 385, 394. See Murphy v. Worcester Consol. St. Ry., 199 Mass. 279, 287–288, 85 N. E. 507, 510; Foster v. Hart Consol. Min. Co., 52 Colo. 429, 435, 122 P. 54, 55.

[23] State v. Tibbetts, 21 Okla. Cr. 168, 205 P. 776, 779.

[24] Wilbur v. United States ex rel. Kadrie, 281 U. S. 206, 219; Work v. United States ex rel. Rives, 267 U. S. 175, 177; United States ex rel. Dunlap v. Black, 128 U. S. 40, 48; United States ex rel. Hall v. Payne, 254 U. S. 343; United States ex rel. White v. Cox, 95 F. (2d) 347, 349, 68 App. D. C. 218, 220.

[25] Red Canyon Sheep Co. v. Ickes, 98 F. (2d) 308, 322, 69 App. D. C. 27, 41. See Santa Fe Pacific R. R. v. Lane, 244 U. S. 492; White v. Macy, 246 U. S. 606; Procter & Gamble Co. v. Coe, 96 F. (2d) 518, 68 App. D. C. 246, cert. denied, 305 U. S. 604.

[26] Rathbone v. Wirth, 6 App. Div. 277, 280, 40 N. Y. S. 535, 542.

[27] Little Rock v. North Little Rock, 72 Ark. 195, 204, 79 S. W. 785, 788.

[28] People v. Capell, 55 Cal. App. 461, 463, 203 P. 837, 838; State ex rel. Hoover v. Hickerson, 130 Mo. App. 47, 50, 109 S. W. 108, 109.

[29] See also: Local administration (Workman v. Mayor, S. D. N. Y., 63 F. 298, 304); local affairs (Brooklyn City R. Co. v. Whalen, 191 App. Div. 737, 740, 182 N. Y. S. 282, 285); local authorities (In re Rochester Electric Ry. Co., 123 N. Y. 351, 356, 25 N. E. 381, 382); local benefits (Rankin v. Yoran, 72 Ore. 224, 230, 143 P. 894, 896); local commercial broker (Stratford v. City Council, 110 Ala. 619, 625, 20 So. 127, 128); local drainage (Ford v. Toledo, 64 Ohio St. 92, 97, 59 N. E. 779, 781); local habitation (Greenlee v. Marks, 62 Ind. 418, 420); local officer (People ex rel. Baird v. Nixon, 156 N. Y. 221, 227, 52 N. E. 1117, 1118); local police, (State ex rel. Walsh v. Hine, 59 Conn. 50, 60, 21 A. 1024, 1025); local property (San Francisco & S. J. V. Ry. v. Stockton, 149 Cal. 85, 90 84 P. 771, 774); local purpose (State ex rel. Adsit v. Allen, 1 Lans. [N. Y.] 248, 251); local freight (Murphy v. Worcester Consol. St. Ry., 199 Mass. 279, 287, 85 N. E. 507, 510).

[30] Smelting Co. v. Kemp, 104 U. S. 636, 649.

[31] Connally v. General Construction Co., 269 U. S. 385, 394–395; State v. Tibbetts, 21 Okla. Cr. 168, 205 P. 776, 779.

[32] Connally v. General Construction Co., 269 U. S. 385, 395.

itself, in any case, connote large geographical areas, with widely diverse interests, such as the fourteen states and the District of Columbia, grouped in the protested determination. The word *place*, in its ordinary significance, has a distinctly limited meaning as is indicated by such expressions as place of birth, place of origin, the old home place, ore in place, and by the word placement as used in the game of tennis. Would a jury from the *vicinity* of Brooklyn be acceptable—within the well known rule [33]—for the trial of an accused person in St. Lawrence County, New York, to say nothing of Sussex County, Delaware? Would it be a normal use of the word to say that folks in Van Buren, Maine, *neighbor* with those in the District of Columbia, or in Monongalia County, West Virginia? To ask these questions is to answer them. The word *community* [34] connotes a congeries of common interests arising from associations—social; business, religious, governmental, scholastic, recreational—involving considerations of public health, fire protection, water, sewage, transportation, and other services, which bind together the people of such a community or set them quarreling with each other. The only community of interest revealed by the determination in the present case is steel and iron manufacture. It could almost as well be said that because Esperanto groups throughout the world have a community of interest, the whole world is a locality. . . .

Words which approximate in meaning the definition contended for by appellees are *area*, *region*, *province*, *territory*, *river basin*, *drainage area*, *watershed*. In the Report of the Public Contracts Board [35]—and upon which it is alleged that the protested determination was based—the words *area* and *region* are used throughout. The Report reveals that no attention was paid therein to the concept of *locality* specified in the statute. In fact, the basis of the determination—assuming the correctness of appellants' allegations, as we are bound to do upon a motion to dismiss [36]—is revealed throughout the Report by such language as the following: "The predominant minimum wage practice in this industry comes to light only when we view the practice of the industry *as a whole* or over broad *regional areas*." [Italics supplied]; and again by the following language: "These various *producing centers* occupy relatively small *areas* and none of them

[33] 2 Cooley's Bl. Comm. (4th ed. 1899) 1491 (Book IV) *350: "When, therefore, a prisoner on his arraignment has pleaded not guilty, and for his trial hath put himself upon the country, which country the jury are, the sheriff of the county must return a panel of jurors, liberos et legales homines, de vicineto: that is, freeholders, without just exception, and of the visne or neighbourhood; which is interpreted to be of the county where the fact is committed"; Chicago v. Knobel, 232 Ill. 112, 114, 83 N. E. 459, 460: "* * * under the common law, in both civil and criminal cases, the jury were to be taken from the visne or neighborhood—from among the neighbors and equals of the litigants, or the accused—and by long usage this came to mean from the body of the county"; Commonwealth v. Collins, 268 Pa. 295, 300, 110 A. 738, 739. See Callan v. Wilson, 127 U. S. 540, 549; Clement v. United States, 8 Cir. 149 F. 305, 310, cert. denied, 206 U. S. 562; Spencer v. United States, 8 Cir. 169 F. 562, 565.

[34] Holmes, The Common Law (1881) 41: "The first requirement of a sound body of law is, that it should correspond with the actual feelings and demands of the *community*, whether right or wrong." [Italics supplied.]

[35] Appointed by the Secretary of Labor, October 6, 1936.

[36] Ickes v. Fox, 300 U. S. 82, 96; Ickes v. Virginia-Colorado Development Corp., 295 U. S. 639, 646; National Remedy Co. v. Hyde, 50 F. (2d) 1066, 1067, 60 App. D. C. 252, 253.

can be called *geographic regions*. It should be noted that the variations in base rates between a majority of the *producing centers* are not wide. * * * The question here is whether these relatively small wage variations between relatively *small geographical areas* should be made the basis for separate findings of prevailing minimum wages which would be limited to the *locale* of the variation." [Italics supplied.] The Report and the determination both answered the question in the negative; deliberately rejecting the delegation of power given by the statute and assuming a power neither given nor intended thereby.[37]

It is significant that appellees cite no cases which support or suggest a meaning for the word *locality* comparable in geographical area or scope with the meaning given to it in the protested determination. But they argue that the use of the word *locality* in the Public Contracts Act in preference to the language "city, town, village, or other subdivision of the state" which is used in the Davis-Bacon Act[38] "clearly discloses the congressional intent that the word 'locality' shall not be restricted to a civil subdivision of the state." In this they are no doubt correct. Congress obviously had in mind a local center of manufacture. This might lie entirely within a civil subdivision; but on the other hand it might overlap from one civil subdivision to another, or perhaps it might even overlap a state line. In order to avoid the difficulties inherent in a mandate to determine minimum wages paid within such civil subdivisions, Congress, instead, kept in mind the habits of industry itself, which frequently disregards imaginary

---

[37] Equally revealing are the following apparently inadvertent uses of the word *locality* and its variants, which appear in the Report: "No particular *locale* marks out the *location* of the plants paying the base rates from 50 to 55 cents. These rates are found in *localities* eastward from Marion, Ohio, into New England. * * * "Turning now to the subject of geographical location we refer back to the table on pages 79 and 84 for a detailed listing by *location* of the plants in which the base rates above 54 cents are paid. It will be found that the base rates are paid in the following *locations:* 55.0—New England; near Buffalo; central Ohio and Indiana; Kansas City and St. Louis, Missouri. 56.0—Kentucky; West Virginia; Philadelphia; western Illinois. 56.25—Central Ohio. 56.5—Sparrows Point, Maryland; Philadelphia *vicinity;* eastern and central Pennsylvania; northern New Jersey; Syracuse, New York; central Ohio; St. Louis *vicinity.* 57.0—Philadelphia and *vicinity;* eastern Pennsylvania; northern New Jersey; New England. 58.0—California; New England. 58.5—Johnstown, Pennsylvania; central Ohio; St. Louis *vicinity.* 59.5—Buffalo and *vicinity;* Philadelphia; central Indiana; Chicago *vicinity.* 60.0—Pittsburgh *vicinity;* Buffalo *vicinity;* Duluth, Minnesota; central Indiana; Chicago *vicinity;* Colorado; Utah; California; Washington. 60.5—Central Ohio. 62.5—Chicago and *vicinity;* Gary and *vicinity;* Michigan; central Ohio; Kentucky; Cleveland and *vicinity;* Youngstown and *vicinity;* Pittsburgh and *vicinity;* West Virginia; New Jersey; New England. 63.0—Michigan. 63.5—Pittsburgh. 65.0—California; Michigan. 70.0—Michigan. It will be observed that none of the rates is paid exclusively in any one *geographic area* except in the few instances where there is only a single plant paying one of the rates. The summary of plant *location* in connection with the base rates shows that each of the outstanding base rates is paid by plants spread across the Middle West and the East. For instance, 56.5, 58.5, 59.5, and 62.5 cents are paid in plants *located* in the Middle West and east of Pittsburgh. The Western plants are represented in the scale by the base rates of 58, 60, and 65 cents. These rates are also paid in the Middle West and east of Pittsburgh. While it is apparent that no portion of the wage scale can be assigned exclusively to New England, or east of Pittsburgh, or the Middle West or the West, it is a fact that in a good many *localities* and areas over the breadth of the country one or another of the base rates is paid to more workers than is any of the other rates. The industry is spread between the four corners of the country. The geographic limits of the industry are as wide apart as Portland, Maine; Seattle, Washington; Duluth, Minnesota; and Fort Worth, Texas. There are plants in 20 states and every section of the country has a share in the production of iron and steel and their products. In some parts of the country the plants are sparsely distributed and in other places they are thickly concentrated around a *center* or production. The plants are *located* in or around the large and middle-sized cities, in small *communities*, and even in rural *areas*. It is to be expected that differences in *location* would be reflected in different base rates." [Italics supplied.]

[38] Act of March 3, 1931, 46 Stat. 1494, as amended by Act of August 30, 1935, 49 Stat. 1011, 40 U. S. C. A. § 267a (Supp. 1938).

political boundary lines, and establishes itself in economically strategic positions, determined by supplies of raw material and labor, and facilities for marketing, such as water and rail transportation. Localities develop in much the same manner as do industrial centers. A combination of a river, a rough mountainous terrain, deposits of coal and iron, and a hardy, independent people, is apt to produce a community, a neighborhood, which may in turn become a city or town, which may result in the formation of a county; but which, on the other hand, may be less or greater in area than such arbitrary political subdivisions. Sometimes such localities precede and sometimes follow the development of industrial and production centers.

It is vitally significant that Congress in its effort to deal with such industrial centers—rather than with civil subdivisions—did not use a word such as region or area, which might have been susceptible of the meaning for which appellees contend. It chose instead a word of limited meaning, long and well known to those acquainted with the American tradition. It is a settled rule of statutory construction that Congress will be presumed to have used language in its usual significance and in accordance with common understanding.[39]

Appellees contend that to attribute to the word locality a limited—i. e., its well-settled—meaning would produce difficult and objectionable problems of administration. While this may be true, it constitutes no reason for disregarding the clearly expressed intention of Congress. Administrative convenience and public interest may, under some circumstances, coincide. But it is not always so. Governmental functions may involve a multiplicity of administrative details. It would no doubt be much more convenient for the Postmaster General if a few large centers could be used for the collection and distribution of mail. But in that case, as in the present, Congress has spoken in terms of governmental service to be performed on a basis of *localities;* with all the administrative inconvenience which may follow the carrying out of its mandates. If the language used by Congress had been obscure, then the argument of hardship and inconvenience might be persuasive. "But considerations of this nature can never sanction a construction at variance with the manifest meaning of the legislature, expressed in plain and unambiguous language."[40] If the language is plain and the meaning clear, the duty of interpretation does not arise and the sole function of the courts is to enforce the statute according to its terms.[41]

Again, appellees contend that their interpretation should be adopted by virtue of the rule that an administrative construction consistently adhered to and not plainly erroneous should be followed by the courts.

---

[39] United States v. Wurts, 303 U. S. 414, 417; Old Colony Trust Co. v. Commissioner of Internal Revenue, 301 U. S. 379, 383; DeGanay v. Lederer, 250 U. S. 376, 381; Union Pacific R. R. v. Hall, 91 U. S. 343, 347; Caminetti v. United States, 242 U. S. 470, 485-486.

[40] Evans v. Jordan and Morehead, 9 Cranch. [U. S.] 199, 203. See United States v. Fisher, 2 Cranch. [U. S.] 358, 386; Crooks v. Harrelson, 282 U. S. 55, 60.

[41] Caminetti v. United States, 242 U. S. 470, 485. See, United States v. Lexington Mill & Elevator Co., 232 U. S. 399, 409; Dewey v. United States, 178 U. S. 510, 520-521. See also Houghton v. Payne, 194 U. S. 88, 100.

That rule, if applicable under the circumstances of the present case, would bar judicial review of administrative action in all cases. The statute under which appellees purport to act was not approved until June 30, 1936, just two years and eight months prior to the filing of the complaint in this case; the Public Contracts Board was not created until October 6, 1936; the Report of the Public Contracts Board was dated October 27, 1938; and the protested Determination was not issued until January 16, 1939, *forty days* prior to the filing of the complaint in the present case. The record is bare of any showing of "administrative construction consistently adhered to" except the bald assertion to that effect contained in the Determination itself, dated January 16, 1939, and upon which appellees rely. In other words, we are asked to respect and follow an administrative construction first announced only forty days prior to the commencement of suit to challenge that construction.

The rule which appellees seek to apply, as revealed by the cases upon which they rely, relates to construction and practice of long standing,[42]—revealed by the issuance of regulations,[43] granting of permits [44] and otherwise [45]—made known to Congress [46] and acquiesced in by it.[47] Moreover, the rule relates to the interpretation of an ambiguous or doubtful statute, not one plain on its face as in the present case. "A custom of the department, however long continued by successive officers, must yield to the positive language of the statute." [48] Obviously, therefore, the rule has no application here.

The clearly expressed purpose of the statute is that the Secretary shall determine "the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished * * *" [49] and not that he shall impose upon such local industries "the predominant minimum wage practice" of the industry viewed "as a whole or over broad regional areas." To permit the Secretary to establish a minimum wage scale for the area embraced within fourteen States and the District of Columbia would be to defeat rather than to accomplish the purpose of the Act.[50] Under the circumstances it is not necessary to look farther to discover the legislative intent. But if there were any element of vagueness or uncertainty in the language used, either as to the purpose of the Act

---

[42] Swendig v. Washington Water Power Co., 265 U. S. 322, 331; Wisconsin v. Illinois, 278 U. S. 367, 413 (thirty years).
[43] Brewster v. Gage, 280 U. S. 327, 336–337.
[44] Wisconsin v. Illinois, 278 U. S. 367, 414.
[45] Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U. S. 315, 329 (opinion of Patent Office); Wisconsin v. Illinois, 278 U. S. 367 (opinion of Attorney General).
[46] Wisconsin v. Illinois, 278 U. S. 367.
[47] United States v. Shreveport Grain & Elevator Co., 287 U. S. 77, 84; Santa Fe Pacific R. R. v. Lane, 244 U. S. 492, 496.
[48] Houghton v. Payne, 194 U. S. 88, 100; Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U. S. 315, 330–331; Brewster v. Gage, 280 U. S. 327, 336; Swendig v. Washington Water Power Co., 265 U. S. 322, 331; Louisville & Nashville R. R. v. United States, 282 U. S. 740, 757, 759; Texas & Pacific Ry. v. United States, 289 U. S. 627, 640; United States v. Tanner, 147 U. S. 661.
[49] 49 Stat. 2036, 41 U. S. C. A. § 35 (b) (Supp. 1938).
[50] See Webster v. Luther, 163 U. S. 331, 342.

in using the word locality [51] or as to the intent of Congress that the Secretary of Labor should not be empowered thereby to fix wages,[52] it would be eliminated immediately by reference to explanations given on the floor of the House by those in charge of the measure.

Appellees contend that the present suit is in fact one against the United States: that the latter is an indispensable party which, not having given its consent, cannot be sued. It is true, as a general rule, that the United States is an indispensable party in certain suits in which the judgment or decree rendered may substantially affect its interests;[53] but all suits against public officers do not fall within the operation of that rule.[54] Thus, it has long been recognized that an officer who acts outside the scope of his jurisdiction and without authorization of law may be liable even in damages for injuries suffered by a citizen as a result thereof.[55] And the Supreme Court has in numerous instances approved the use of injunction process in clear cases of illegal action or threatened illegal action by public officers.[56]

---

[51] Wright v. Vinton Branch, 300 U. S. 440, 463, and cases there cited in note 8. Extracts from CONGRESSIONAL RECORD, Vol. 80, Part 9, 74th Cong., 2d Sess.:
(Page 9992.)
"Mr. GREENWOOD. Mr. Speaker, this resolution from the Committee on Rules provides for consideration of what is known as the Walsh-Healey Bill, which bill regulates specifications in connection with the purchase of supplies by the Government of the United States. It provides that no less than the prevailing minimum wage shall be paid to workers in the community where the supplies are manufactured or where the work is performed."
(Page 9993.)
"Mr. GREENWOOD. This bill provides that they shall pay the prevailing wages in the community where the work is performed; so the bill takes care of the very proposition of which the gentleman speaks."
(Page 10008.)
"Mr. CITRON. The bill before us is in substance an extension of the Bacon-Davis Act to all Government purchases amounting to over $10,000.
* * * * * * *
"The bill merely provides that the Government shall have the right to refuse the bids on all purchases over $10,000 to those * * * (4) who pay less than the prevailing rate of wages in their community. * * *"

[52] The original bill introduced by Congressman Healey (H. R. 11554, 74th Cong., 2d Sess.) contained the following language: "* * * minimum wages fixed under this Act shall be such wages as are fairly and reasonably commensurate with the value of the service or class of service rendered." This language, however, was omitted from the bill as enacted. The reason therefor appears clearly from the statements of the managers on the floor of the House as follows:
(80 Cong. Rec. 10003.)
"Mr. HEALEY. That is an administrative problem. As I view it, the prevailing wage is already a fact which already exists. The Secretary's duty is simply to inquire and ascertain what that prevailing wage is."
(80 Cong. Rec. 10004.)
"Mr. WALTER. * * * If there is any grave difference of opinion with respect to any portion of this bill it certainly comes with respect to the possibility, if you please, of the Secretary of Labor fixing wages. There is no Member of this House any more opposed to that idea than I am. I say to you frankly that I would not have voted to report such a bill, but there is nothing in this measure that gives to anyone in any executive branch any authority to fix wages. We have had no difficulty in determining what the prevailing rates of wages are under the Bacon-Davis Act. It has been a comparatively simple matter to go into each community in which Government buildings are being constructed, and determine what every particular artisan is paid in that community. The problem is the same here."

[53] Transcontinental & Western Air, Inc., v. Farley, 2 Cir., 71 F. (2d) 288, 290, cert. denied, 293 U. S. 603. See United States ex rel. Goldberg v. Daniels, 231 U. S. 218; Louisiana v. McAdoo, 234 U. S. 627; Morrison, Jr., v. Work, 266 U. S. 481, 485–486; Wells v. Roper, 246 U. S. 335, 337; International Postal Supply Co. v. Bruce, 194 U. S. 601; Belknap v. Schild, 161 U. S. 10. See also Adams v. Nagle, 303 U. S. 532, 540–541, 542; United States ex rel. Riverside Oil Co. v. Hitchcock, 190 U. S. 316, 325.

[54] See Scheer v. Moody, D. Mont., 48 F. (2d) 327, 330, rev'd on other grounds, 66 F. (2d) 999.

[55] Bradley v. Fisher, 13 Wall. [U. S.] 335, 351–352. See Cooper v. O'Connor, 99 F. (2d) 135, 137–138, 69 App. D. C. 100, 102–103, cert. denied, 305 U. S. 643. Cf. Johnson v. Lankford, 245 U. S. 541.

[56] Ickes v. Fox, 300 U. S. 82, 97; American School of Magnetic Healing v. McAnnulty, 187 U. S. 94; Waite v. Macy, 246 U. S. 606; Gegiow v. Uhl, 239 U. S. 3 (habeas corpus); Philadelphia Co. v. Stimson, 223 U. S. 605, 620; Goltra v. Weeks, 271 U. S. 536, 545; Adams v. Nagle, 303 U. S. 532, 541–542; Colorado v. Toll, 268 U. S. 228, 230; Lane v.

By reason of their illegality, the acts or threatened acts of such officers are personal and derive no official justification from their being done in asserted agency for the Government.[57]

The jurisdiction of the lower court in the present case depended upon the allegations of the bill of complaint.[58] The bill did not ask the court to interfere with the official discretion of the appellees. It challenged their authority to do the things of which complaint was made.[59] If the allegations of the complaint are true—and we must assume this to be the fact—the action complained of in the present case was not an interpretation of law within the scope of appellees' authority,[60] as in Wells v. Roper,[61] or within the range of their statutory discretion,[62] as in Morrison, Jr. v. Work [63] and Transcontinental & Western Air, Inc. v. Farley;[64] but, instead, it was a palpable evasion of the letter and

---

Watts, 234 U. S. 525, 540; Procter & Gamble Co. v. Coe, 96 F. (2d) 518, 521–522, 68 App. D. C. 246, 249–250, cert. denied, 305 U. S. 604:

"The following tests have been used to uphold the exercise of judicial restraint upon executive action under valid laws: (1) Where an officer, insisting that he has the warrant of the statute, is transcending its bounds, and thus unlawfully assuming to exercise the power of government (Philadelphia Co. v. Stimson, supra [223 U. S. 605]); where an officer attempts to enlarge his power, or to usurp power (Waite v. Macy, supra [246 U. S. 606]); or (3) where his act is based upon a clear mistake of law (American School of Magnetic Healing v. McAnnulty, 187 U. S. 94, 109, 110, 23 S. Ct. 33, 47 L. Ed. 90); (4) where the action of the officer or administrative body is clearly beyond its power and in violation of the statute (Interstate Commerce Commission v. Northern Pacific Ry. Co., 216 U. S. 538, 30 S. Ct. 417, 54 L. Ed. 608. See Lane v. Watts, 234 U. S. 525, 540, 34 S. Ct. 965, 58 L. Ed. 1440; Santa Fe Pacific R. Co. v. Lane, 244 U. S. 492, 497, 37 S. Ct. 714, 61 L. Ed. 1275); (5) where an officer has acted, or threatens to act, in a capricious and arbitrary manner (Commercial Solvents Corp. v. Mellon, 51 App. D. C. 146, 277 F. 548, 550, and cases there cited); (6) where the act of the officer, 'under any view that could be taken of the facts that were laid before him, was ultra vires, and beyond the scope of his authority' [and] he has no power at all to do the act complained of, he is as much subject to an injunction as he would be to a mandamus if he refused to do an act which the law plainly required him to do.' Noble v. Union River Logging R. Co., 147 U. S. 165, 171, 172, 13 S. Ct. 271, 273, 37 L. Ed. 123; Board of Liquidation v. McComb, 92 U. S. 531, 541, 23 L. Ed. 623."

[57] Goltra v. Weeks, 271 U. S. 536, 544. See Ryan v. Chicago, B. & Q. R. R., 7 Cir., 7 F. (2d) 137, 144–145; Haskins Bros. & Co. v. Morgenthau, 85 F. (2d) 677, 684, 66 App. D. C. 178, 185, cert. denied, 299 U. S. 588. See also Allen v. Regents, 304 U. S. 439, 444.

[58] Utah Fuel Co. v. National Bituminous Coal Comm., 306 U. S. 56, 60; Johnson v. Lankford, 245 U. S. 541.

[59] Philadelphia Co. v. Stimson, 223 U. S. 605, 620; Ickes v. Fox, 300 U. S. 82, 97; Payne v. Central Pacific Ry., 255 U. S. 228, 236; Franklin Tp. v. Tugwell, 85 F. (2d) 268, 272, 66 App. D. C. 42, 46.

[60] See American School of Magnetic Healing v. McAnnulty, 187 U. S. 94, 109–110: "The facts, which are here admitted of record, show that the case is not one where, by any construction of those facts is covered or provided for by the statutes under which the Postmaster General has assumed to act, and his determination that those admitted facts do authorize his action is a clear mistake of law as applied to the admitted facts, and the courts, therefore, must have power in a proper proceeding to grant relief. Otherwise, the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer, whose action is unauthorized by any law and is in violation of the rights of the individual. Where the action of such an officer is thus unauthorized he thereby violates the property rights of the person whose letters are withheld."

[61] 246 U. S. 335, 337–338: "But the averments of the bill make it clear that defendant was without personal interest and *was acting solely in his official capacity and within the scope of his duties.* Indeed, it was only because of his official authority that plaintiff's interests were at all endangered by what he proposed to do. * * * And the case does not fall within any of the exceptions to the general rule that the United States may not be sued without its consent, nor its executive agents subjected to the control of the courts respecting the performance of their official duties. It cannot successfully be contended that any question of defendant's official authority is involved; it is a mere question of action alleged to be inconsistent with the stipulation under which it purported to be taken. * * *" [Italics supplied.]

[62] Work v. United States ex rel. Rives, 267 U. S. 175, 177–178; United States ex rel. Goldberg v. Daniels, 231 U. S. 218, 221.

[63] 266 U. S. 481, 486: "The case at bar is unlike those in which relief by injunction has been granted against the head of an executive department, or other officer, of the Government to enjoin an official act on the ground that it was not within the authority conferred, or that it was an improper exercise of such authority, or that Congress lacked the power to confer the authority exercised."

[64] 2 Cir., 71 F. (2d) 288, 291, cert. denied, 293 U. S. 603: "The courts will * * * enjoin acts such as trespass, a *step taken beyond the scope of statutory authority or jurisdiction* of executive officers, but they will not interfere with matters intrusted by Congress to the discretion of the heads of executive departments of the government." [Italics supplied.]

spirit of the pertinent statute. It was an arbitrary attempt "wholly to disregard the statutory mandate"; "to act in the teeth of a [the] statute."[65] In such a case "the suit rests upon the charge of abuse of power, and its merits must be determined accordingly; it is not a suit against the United States."[66]

Appellees contend, also, that their actions are not subject to judicial review and restraint because the protested determination is not an *order* but a mere "finding" which does not command appellants to perform an act or refrain from performing an act; specifically, that no order—based upon such finding—has been issued "directing the Appellants or anyone else to bid upon Government contracts and to agree to pay the prescribed minimum wage." This contention is without merit. No order was required to make the determination effective. By its own terms, it was made binding and effective upon all interested persons and agencies. Thus, it was expressly provided that the "determination shall be effective and the minimum wages hereby established for the respective localities *shall apply to all contracts* awarded subject to Public Act No. 846, 74th Congress, on or after January 31, 1939." [Italics supplied.][67] While the decision thus rendered may not be an "order" in the sense that it does not command or enjoin action,[68] it has legal effect and is final and binding upon all persons desiring to submit bids for government contracts, as well as upon all government agencies. In this respect the determination is similar to many which have been successfully challenged in the courts. Thus, no order was issued in the McAnnulty case,[69] directing the American School of Magnetic Healing, or anyone else, to conduct or refrain from conducting business by mail, and similarly, no order was issued in the case of Waite v. Macy,[70] requiring anyone to import or refrain from importing tea. In Red Canyon Sheep Co. v. Ickes,[71] no order was issued requiring complainant to exercise or refrain from exercising the privilege of grazing sheep upon the public domain. Likewise, in Utah Fuel Co. v. National Bituminous Coal Comm.,[72] the Supreme Court, although dismissing the complaint on the merits, sustained the jurisdiction of the District Court to hear a challenge of the authority of the Coal Commission to direct a disclosure of allegedly confidential

[65] See Adams v. Nagle, 303 U. S. 532, 542, 543.
[66] Philadelphia Co. v. Stimson, 223 U. S. 605, 620; Goltra v. Weeks, 271 U. S. 536, 545. See also, Truax v. Raich, 239 U. S. 33, 37.
[67] The effective date was postponed until March 1, 1939.
[68] Shanahan v. United States, 303 U. S. 596; American Federation of Labor v. National Labor Relations Board, 103 F. (2d) 933, — App. D. C. —; Cf. Rochester Telephone Corp. v. United States, 307 U. S. 125.
[69] American School of Magnetic Healing v. McAnnulty, 187 U. S. 94.
[70] 246 U. S. 606, 608–609: "No doubt it is true that this Court cannot displace the judgment of the board in any matter within its jurisdiction, but it is equally true that the board cannot enlarge the powers given to it by statute and cover a usurpation by calling it a decision on purity, quality, or fitness for consumption. Morrill v. Jones, 106 U. S. 466. United States v. United Verde Copper Co., 196 U. S. 207, 215. United States v. George, 228 U. S. 14, 21. Again, it is true that Courts will not issue injunctions against administrative officers on the mere apprehension that they will not do their duty or will not follow the law. First National Bank of Albuquerque v. Albright, 208 U. S. 548. But in this case the superior of the appellants had promulgated a rule for them to follow which is alleged to be beyond the power of the Secretary to make. It is said that the appellants are independent of the Secretary and that it is to be presumed that they will decide according to law, as they say in their answer. But if the avoidance of a direct statement as to their intent did not of itself warrant a presumption that they would obey orders, the admissions to their counsel were enough to make their intent to do so plain."
[71] 98 F. (2d) 308, 69 App. D. C. 27.
[72] 306 U. S. 56.

information already in its possession. The determinations attacked in these cases—as in the case at bar—were not addressed to the parties complaining but were directed to and purported to govern the activities of administrative officials in carrying out duties created by statute.

Neither is it necessary that special legislative authorization be found in order to permit use of injunction process. As the Supreme Court recently said: "We have held that the determination of the Commission is not an '*order*' reviewable under the Urgent Deficiencies Act of October 22, 1913. Shannahan v. United States, supra [303 U. S. 596]. But we have not held that the determination of the Commission was not subject to judicial review by other procedure, a question which, as we said in the Shannahan case, we had no occasion there to consider. Id., at p. 603. The nature of the determination points to the propriety of judicial review. * * * Equity jurisdiction may be invoked when it is essential to the protection of the rights asserted, even though the complainant seeks to enjoin the bringing of criminal actions." [73]

But appellees contend that appellants have no right which can be protected by injunction; that they are no better off in this respect than would be an ordinary taxpayer.[74] This contention, also, is without merit. In Tennessee Electric Power Co. v. Tennessee Valley Authority,[75] the Supreme Court discussed the doctrine that one threatened with direct injury by the act of an agent of the Government "which, but for statutory authority for its performance, would be a violation of his legal rights, may challenge the validity of the statute in a suit against the agent," and said: "The principle is without application unless the right invaded is a legal right—[1] one of property, [2] one arising out of contract, [3] one protected against tortious invasion, or [4] one founded on a statute which confers a privilege." [Numbers in brackets added.] [76] Certainly the principle should not be less broadly stated in the present case where appellants are not challenging the validity of the statute but are contending, instead, that appellees acted and threaten to act, in violation of the statute, without authority of any kind. In fact, four of the nine cases cited by the Supreme Court, in illumination of the language quoted, were ones in which the acts of the officer were alleged to be without statutory authorization, as in the present case.[77]

It is not denied that appellants have a general legal right to carry on their business free from unlawful restraints,[78] but it is contended

---

[73] Shields v. Utah Idaho Central R. R., 305 U. S. 177, 182–183; Utah Fuel Co. v. National Bituminous Coal Comm., 306 U. S. 56, 59–60; American Federation of Labor v. National Labor Relations Board, 103 F. (2d) 933, — App. D. C. —. See Philadelphia Co. v. Stimson, 223 U. S. 605, 621, 622; Truax v. Raich, 239 U. S. 33, 37, 38; Terrace v. Thompson, 263 U. S. 197, 214; Proctor & Gamble Co. v. Coe, 96 F. (2d) 518, 68 App. D. C. 246, cert. denied, 305 U. S. 604, and authorities there cited.

[74] See O'Brien v. Carney, D. Mass., 6 F. Supp. 761, 762.

[75] 306 U. S. 118, 137–138.

[76] This list should be extended to include rights founded on constitutions or treaties which confer privileges. See Asakura v. Seattle, 265 U. S. 332.

[77] American School of Magnetic Healing v. McAnnulty, 187 U. S. 94; Scully v. Bird, 209 U. S. 481, 489; Philadelphia Co. v. Stimson, 223 U. S. 605, 620, 621; Lane v. Watts, 234 U. S. 525, 540.

[78] See International News Service v. The Associated Press, 248 U. S. 215, 236; Id. Canyon Sheep Co. v. Ickes, 98 F. (2d) 308, 317, 69 App. D. C. 27, 36: "* * * the right to carry on a business without illegal interference causing irreparable damage is the subject of equitable protection by injunction." See also, Louis Kamm, Inc., v. Flink, 113 N. J. L. 582, 586–590, 175 A. 62, 66, 67; Godin v. Niebuhr, 236 Mass. 350, 351, 128 N. E. 406, 407.

that no such right is interfered with or molested in the present case—that the determination of the Secretary of Labor is not applicable to appellants' business generally but only to transactions with the Government; that appellants have no legal right to do business with any particular individual; that especially they have no legal right to do business with the Government under any terms or conditions, hence, it is immaterial that an administrative official imposes an unlawful condition. In support of their position, appellees rely upon such cases as B. F. Cummins Co. v. Burleson, 40 App. D. C. 500; O'Brien v. Carney, D. Mass., 6 F. Supp. 761; and Colorado Pav. Co. v. Murphy, 8 Cir., 78 F. 28. These cases are not in point. They hold merely that the lowest bidder is not entitled to an injunction against the letting of a contract to another bidder, or of mandamus to compel an award, since these acts require the exercise of judgment and discretion which cannot be controlled by judicial process. They do not hold that a person has no legal right to deal with the Government in the ordinary course of his business and to bid in competition with others on government contracts; provided, of course, that he observes terms or conditions lawfully imposed.[79] On the contrary, the right to carry on business, generally, necessarily includes the right to negotiate with prospective customers and purchasers free from unlawful restrictions and interference.[80] In this respect it is immaterial whether the prospective customer be a private individual or a government agency. In fact, the right of a person to bid on government contracts is a more valuable right—because of the policy adopted by Congress to encourage free and full competition—than is his right to seek the patronage of private individuals. In the latter case, the prospective customer may decline to carry on business, upon any ground, whether of reason, of whim, caprice, prejudice, or malice.[81] Section 3709, R. S. (41 U. S. C. A. § 5), on the other hand, imposes a duty upon the government departments to advertise publicly for bids and proposals, except when the public exigencies require otherwise, and to award contracts to the lowest responsible bidders.[82]

Cases such as American School of Magnetic Healing v. McAnnulty,[83] Gegiow v. Uhl,[84] Waite v. Macy,[85] and Red Canyon Sheep Co. v. Ickes,[86] present situations analogous to that of the present case. The right of the complainants which was infringed in the McAnnulty case was "the legal right under the general acts of Congress relating to the mails to have their letters delivered at the post office as directed," and to conduct their mail order business. In the Gegiow case it was the

---

[79] See 38 Ops. Att'y Gen. (1937) 555, 558: "It is well established that the invitation for bids on a Government contract must be such as to permit full and free competition. * * *"

[80] See Godin v. Niebuhr, 236 Mass. 350, 128 N. E. 406; 2 COOLEY, TORTS (4th ed. 1932) § 220. Cf. Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 252.

[81] Great A. & P. Co. v. Cream of Wheat Co., 2 Cir., 227 F. 46. Compare the situation when one of the parties has a monopoly. Eastman Kodak Co. v. Southern Photo Materials Co., 273 U. S. 359.

[82] 38 Ops. ATT'Y GEN. (1937) 555, 557.

[83] 187 U. S. 94.

[84] 239 U. S. 3.

[85] 246 U. S. 606.

[86] 98 F. (2d) 308, 69 App. D. C. 27.

right to enter and remain in the United States subject to the conditions imposed by Congress. In the Waite case it was the right to import tea subject only to the conditions imposed and permitted to be imposed by the statute. In the Red Canyon Sheep Co. case it was the privilege of carrying on the business of sheep raising upon the public domain, subject only to similar statutory conditions and limitations. In the present case it is the right to bid for government contracts and, if awards are made, to perform such contracts under the general acts of Congress relating to such matters, in each case subject only to limitations and conditions imposed or permitted to be imposed by Congress.

A person need not conduct business by mail, or import tea, or graze sheep, or migrate to the United States, unless he wishes to do so, but it is his right to do so, and if he does he can be subjected to any lawful limitation imposed by Congress. Similarly, a citizen need not bid for government contracts but it is his right to do so, and if he does he, too, can be subjected, similarly, to any lawful limitation imposed by Congress.[87] But when any person, private or official, attempts to interfere with these rights by unlawful limitations not imposed or allowed to be imposed by Congress, then relief may be obtained upon a proper showing. A statute, by prescribing the conditions and limitations which properly may be imposed upon one who seeks to enjoy a right, prohibits the denial of the right upon other grounds.[88] In the present case, appellees admit that appellants have a right to bid on government contracts. They argue that appellants may bid on any terms they choose, and without including the minimum wage stipulation required by the protested determination. But bidding in the manner suggested would be a useless gesture, foredoomed to failure, because of the imposition of the unlawful requirements; hence, the imposition of such requirements in tantamount to a denial of the right to bid in the first instance.

In the present case, as in the ones last cited, the complainants "had violated no law which Congress had passed;"[89] nevertheless, in each case their rights have been interrupted and blockaded by "the absolutely uncontrolled and arbitrary action of a public and administrative officer, whose action is unauthorized by any law and is in violation of the rights of the individual."[90]

Appellees contend that appellants have failed to allege facts which show that any injury is sufficiently impending and threatening to justify the exercise of equity jurisdiction. It appears from the complaint that appellants are engaged in the production and sale of products of the iron and steel industry, within the area of fourteen states and the District of Columbia determined by appellees to constitute a locality; that they employ common laborers at wages ranging from 52½ to 56½

---

[87] Ellis v. United States, 206 U. S. 246; Stephenson v. Binford, 287 U. S. 251, 275-276; Atkin v. Kansas, 191 U. S. 207, 222-223; Heim v. McCall, 239 U. S. 175, 191.

[88] Geglow v. Ubl, 239 U. S. 3, 9.

[89] American School of Magnetic Healing v. McAnnulty, 187 U. S. 94, 110.

[90] Ibid. The principle enunciated in the McAnnulty case has been approved on numerous occasions by the Supreme and Federal courts. Morrison, Jr. v. Work, 266 U. S. 481; Transcontinental & Western Air, Inc. v. Farley, 2 Cir., 71 F. (2d) 288, 291, cert. denied, 293 U. S. 603; United States ex rel. Riverside Oil Co. v. Hitchcock, 190 U. S. 316, 325; Goltra v. Weeks, 271 U. S. 536, 545; Tennessee Electric Power Co. v. Tennessee Valley Authority, 306 U. S. 118, 137–138.

cents per hour, which in each case, respectively—at Coatesville, Pennsylvania, at Montgomery County, Pennsylvania, at South Chester, Pennsylvania, at Harrisburg, Pennsylvania, at Colgate, Maryland, and at Branford, Connecticut—constitutes the minimum base rate of pay for common labor in the iron and steel industry, although wages paid to common laborers in other employments in such localities are much lower; that four of the seven appellants are parties to agreements with groups of organzied labor, which provide for the payment of the common labor base rates specified; that five of the seven appellants have sold iron and steel products to various agencies of the United States for many years, particularly to the Departments of War, Navy, and Interior; that the principal products sold have consisted of steel plates, sheets, pipe, slabs, high pressure gas cylinders, steel flanges, and aerial bombs; that approximate amounts of gross sales by certain of the appellants to agencies of the United States during 1937 were, respectively: Lukens, $107,750, Alan Wood, $134,000, Harrisburg, $184,807, Eastern, $27,000; and during 1938: Lukens, $277,749, Alan Wood, $185,400; Harrisburg, $71,436; Eastern, $3,350; that only during short periods in more than 20 years has Central been without a government contract in progress; that "Lukens presently is a party to four contracts made with the Department of the Navy, the performance of which has not been completed. The sales price of the iron and steel products to be furnished under such contracts is approximately $100,000"; that Alan Wood has unfilled orders from the War and Navy Departments for iron and steel products, the price of which aggregates approximately $200,000; that the tonnage of products furnished by Central to agencies of the United States during the last ten years has averaged approximately 8% of its total product; that each of the appellants desires to continue to bid on such contracts and carry on similar business with agencies of the United States in the future. The complaint then sets out the various capacities in which Appellees Morgenthau, Peoples, Swanson, Woodring, Ickes, and Farley act in the making of contracts for such products as are manufactured by appellants; it sets out sections of the Public Contracts Act previously referred to; it recites the procedure followed by Appellees Perkins and McLaughlin in arriving at the protested determination, together with portions of that determination. It further sets out that Appellees Perkins and McLaughlin are threatening to make the determination effective; that the determination is "void and wholly beyond the authority" of said appellees; that they "acted arbitrarily and capriciously and wholly without warrant or authority in law"; that the protested determination constitutes an attempt by said appellees "purporting to act in their respective official capacities above set forth and under the guise and pretense of determining the minimum wages actually prevailing in the respective localities in which the plants of plaintiffs and other manufacturers of products of the Iron and Steel Industry are located, but, in fact, acting completely beyond any authority conferred upon them by law, to raise and fix

the wage rates to be paid at such plants." It further appears from the complaint that Appellees Perkins, McLaughlin, and Walling "have been and are threatening to require that there be included in every contract made and entered into after March 1, 1939, by any agency of the United States, for the manufacture or furnishing of products of the Iron and Steel Industry (as that Industry is defined in the Determination), in any amount exceeding $10,000, a stipulation or representation that any person employed by the contractor in the manufacture or furnishing of any of such products used in the performance of the contract will be paid, without subsequent deductions or repayment on any account not less than the minimum wages set forth in the Determination, or a stipulation or representation of like purport and effect; * * *." It appears further that Appellee Peoples, "acting pursuant to the direction and instruction of the defendants Perkins, McLaughlin, and Walling, and purporting to act as Director of Procurement, has directed and threatens to continue to direct every agency of the United States desiring to enter into any such contract after March 1, 1939, to include such a stipulation in such contract and the invitations to bid therefor." It appears further that a regulation issued by Appellee Perkins requires the insertion of the said stipulation in contracts for the manufacture of such materials; that invitations to bid on such contracts, issued by Appellee Swanson, contain a statement that such determination and the wages therein established shall be effective; that Appellees Morgenthau, Swanson, Woodring, Ickes, and Farley intend to and will, unless restrained, require the insertion of a similar stipulation in all contracts awarded under their direction; that large appropriations have been made by Congress for purchase of such materials; that large and important contracts are soon to be let; that appellants desire to bid on such contracts and that unless appellees are enjoined and restrained, appellants will suffer immediate and irreparable injury for which they have no adequate remedy at law for the following reasons, among others:

(i) The plaintiffs will be deprived of their lawful right to bid on contracts for the manufacture or furnishing to any agency of the United States, including the executive departments of which the heads thereof are defendants named herein, of any of the products of the Iron and Steel Industry (as defined in the Determination), free of limitations other than those imposed by Congress, and will be precluded from selling to any such agency any of such products, unless the plaintiffs shall agree, in each contract for the sale to any such agency of any such products in an amount in excess of $10,000, to pay the persons employed in the performance of such contract at the rate of wages specified in the Determination. The plaintiffs will be deprived of such right, and will be required so to agree, not by any statute of the United States or by any action lawfully taken thereunder by any officer or agent of the United States, but by reason of arbitrary and capricious acts of the defendants in excess of and without warrant of, but under color of authority conferred upon them by law.

(ii) As heretofore shown herein, the bids on substantial contracts to be awarded by or under the authority of the defendant Swanson, on which contracts or parts thereof certain plaintiffs heretofore named desire to submit bids, are to be opened on or shortly after March 1, 1939. As also heretofore shown herein, numerous other valuable and important contracts will be let by or under the authority of defendants named herein within a relatively short time after March 1, 1939. If the plaintiffs should submit bids upon any such contract, and enter into any such contracts, which include stipulations or representations in terms or to the effect that the plaintiffs will pay to persons employed by the plaintiffs in the performance of such contracts the minimum wages set forth in the Determination, the plaintiffs would be in danger of being estopped, and counsel for the plaintiffs have advised the plaintiffs that a court might hold that they were estopped, to secure a judicial determination of the invalidity of the Determination. Moreover, the penalties provided in Sections 2 and 3 of the Act for noncompliance with any such stipulation or representation would impose upon the plaintiffs the burden of obtaining a judicial decision of the question of the validity of the Determination only upon the condition that, if unsuccessful, the plaintiffs must pay excessive penalties, have their contracts subject to cancellation, and be precluded from obtaining the award of any public contract for three years, unless the Secretary of Labor otherwise recommends. Such penalties are so severe as in effect to close all approaches to the courts and deprive the plaintiffs of any adequate remedy at law in the premises.

(iii) As has heretofore been shown, the rates of pay for wage earners employed by the plaintiffs at other than common labor base rates of the respective plaintiffs for common labor are generally ascertained by adding various differentials to such common labor base rates, respectively, and an increase in such common labor base rates will, as a practical matter, necessarily result in an increase in the rates of pay for such other persons. Furthermore, it will be impracticable, in the case of any of the plaintiffs who enter into contracts with an agency of the United States requiring an increase in the base rate of pay for persons employed in a particular plant by such plaintiff in the performance of such contract, to fail correspondingly to increase the base rate of pay for other wage earners employed by such plaintiff on other w ers in such plant.

(iv) If the plaintiffs are required to pay the minimum wages fixed in the Determination, there is grave danger that they will no longer be able successfully to compete for Government contracts since large, fully integrated companies enjoying more favorable geographic locations from the standpoint of proximity to sources of supply for the raw materials used by them, proximity to the markets for their products and freight rate differentials should be able to underbid plaintiffs, if the plaintiffs must pay the same minimum wages as such competitors are now paying. On the other hand, if plaintiffs do not agree to pay such minimum wages, they will be in grave danger of losing a substantial source of revenue.

These allegations sufficiently present every requisite to the exercise of equity jurisdiction for the protection of the rights which appellants assert.[91] Moreover, the threat of injury in this case is made greater by the provisions of the Act which penalize failure to conform to orders and determinations made thereunder.[92]

Appellees contend that the complaint should be dismissed because appellants have not exhausted their administrative remedy.[93] But no administrative remedy is provided by the Act to meet the grievances alleged in the complaint, and no administrative remedy is otherwise available. The Act does not contemplate unlawful conduct beyond its terms and entirely outside the scope of its authority. Section 6, which appellees contend establishes an administrative remedy, provides for application to the Secretary of Labor for exception from the operation of the Act, but only (1) at the instance of the "head of the contracting agency or department" upon a written finding that adherence to the Act would seriously impair government business, or (2) upon joint recommendation of the contracting agency and the contractor after a contract has been made. The section further provides that the Secretary may make rules and regulations allowing exemptions from the Act, but we have been referred to no such action by the Secretary. Section 6 assumes a proper determination within the scope of the Act and pursuant to the authority thereof. The procedure therein provided could not possibly be used to challenge the authority of appellees to act as they have done. Moreover, even if that procedure were available to appellants, its use would admit the legality of the protested determination and leave them at the mercy of appellees in carrying out their unlawful purposes.

Appellants request also a judgment under the appropriate statute declaratory of their rights in the premises. A determination of the propriety of that request involves consideration of questions of law which have heretofore been discussed.[95] However, a declaratory

---

[91] See Shields v. Utah Idaho Central R. R., 305 U. S. 177, 183; Utah Fuel Co. v. National Bituminous Coal Comm., 306 U. S. 56.

[92] Section 2 of the statute provides that any breach of this stipulation shall render the contracting party liable to the United States for liquidated damages, including a sum equal to the amount of any deductions, rebates, refunds or underpayment of wages due to any employee engaged in the performance of the contract, and, in addition, shall render the contract subject to cancellation. Section 3 directs the Comptroller General to distribute a list to all government agencies containing the names of persons found to have breached any such representations or stipulations and, unless otherwise recommended by the Secretary of Labor, such persons may not be awarded a government contract for a period of three years. 49 Stat. 2037, 41 U. S. C. A. §§ 36, 37 (Supp. 1938). See Ex parte Young, 209 U. S. 123, 145 et seq.; Philadelphia Co. v. Stimson, 223 U. S. 605, 622; National Remedy Co. v. Hyde, 50 F. (2d) 1066, 1068, 60 App. D. C. 252, 254; Terrace v. Thompson, 263 U. S. 197, 215–216; Petroleum Exploration, Inc. v. Public Service Comm., 304 U. S. 209, 218–220.

[93] Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 50–51; Red River Broadcasting Co., Inc. v. Federal Communications Comm., 98 F. (2d) 282, 284, 69 App. D. C. 1, 3, cert. denied, 305 U. S. 625: "However, it is a well-settled rule of judicial administration that no one is entitled to judicial relief until he has exhausted all prescribed, applicable, administrative remedies. [Italics supplied.] Cf. Mallory Coal Co. v. National Bituminous Coal Comm., 99 F. (2d) 399, 407, 69 App. D. C. 166, 174.

[94] Declaratory Judgment Act, Jud. Code § 274d, 28 U. S. C. A. § 400 (Supp. 1938).

[95] Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 239–241; Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 325; United States v. West Virginia, 295 U. S. 463, 475; Putnam v. Ickes, 78 F. (2d) 223, 226, 64 App. D. C. 339, 342, cert. denied, 296 U. S. 632: "We think it is clear, from any reasonable construction of the acts that the Declaratory Judgment Act has not given the courts jurisdiction over any controversy that would not be within their jurisdiction if affirmative relief were being sought."

judgment may be given even though there be insufficient allegations of threatened irreparable injury to support a prayer for relief by injunction.[96] As the complaint in the present case is sufficient in that respect, as well as in others, it follows that appellants would be entitled to declaratory relief in any event.[97]

The case is therefore remanded to the District Court, which is instructed to set aside and vacate its judgment dismissing the complaint, and is directed to proceed in accordance with the opinion of this court.

Reversed.

EDGERTON, J., dissenting. The first section of the Act of June 30, 1936, sometimes called the Public Contracts Act, requires "in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States * * *, for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount, exceeding $10,000," a stipulation "that all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid * * * not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract." With respect to minimum wages in the iron and steel industry, the Secretary of Labor has divided the United States into six "localities." One "locality" comprises Ohio, Pennsylvania, Delaware, Maryland, Kentucky, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine, part of West Virginia, and the District of Columbia. The Secretary has determined the prevailing minimum wage in iron and steel, in that locality, to be 62½ cents per hour. This minimum prevails in the Pittsburgh and Youngstown districts, where the great bulk of the steel production in the entire area is concentrated; but there are many plants east of the Pittsburgh district, and very few of these pay as much as 62½ cents for common labor. Appellants, who have sold iron and steel products to the government in the past, operate plants in eastern Pennsylvania, Maryland, and Connecticut, and pay minimum wages which vary from 52½ to 56½ cents per hour. Appellants, contending that 14 States are not a "locality" and also that they were not accorded the hearing contemplated by the Act, filed in the court below a bill to compel the Secretary of Labor to withdraw the determination; to enjoin the Director of the Procurement Division of the Treasury Department,

[96] Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 241: "And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required"; Nashville, Chattanooga & St. Louis Ry. v. Wallace, 288 U. S. 249, 264.

[97] Stephenson v. Equitable Life Assur. Soc., 4 Cir., 92 F. (2d) 406; Wallace v. Currin, Cir., 95 F. (2d) 856, 861, aff'd, 306 U. S. 1.

and the Secretaries of War, the Navy, the Treasury, the Interior, and the Postmaster General, individually and in their respective official capacities, from giving effect to the determination in the bidding upon and award of public contracts; and for a declaratory judgment that the determination is invalid.

Appellees point out that dictionaries recognize a broad sense of "locality"; that a narrow construction of the word, as applied to steel, would defeat the purpose of the act by enabling low-wage concerns to compete for government contracts with high-wage concerns in the same competitive area; and that it would also make the act nearly meaningless as applied to steel, because in a given neighborhood there is frequently only one steel concern, which necessarily pays the wages which prevail in its own plant. This definition is from the Century Dictionary: "locality * * *. Any part of space; a situation; position; particularly, a geographical place or situation; as, a healthy locality; the locality of a mineral, plant, or animal." I think the Secretary's construction of the word is a tenable one in the present context. The cases make it doubtful whether we need consider that question, and they make it clear that if the construction is tenable we should not disturb it. United States ex rel. Riverside Oil Co. v. Hitchcock, 190 U. S. 316, 324, 23 S. Ct. 698, 47 L. Ed. 1074; State of Louisiana v. McAdoo, Secretary of the Treasury, 234 U. S. 627, 633, 34 S. Ct. 938, 58 L. Ed. 1506; Adams, Receiver, v. Nagle et al., 303 U. S. 532, 542, 543, 58 S. Ct. 687, 82 L. Ed. 999.

I think that, even if the Secretary's construction of "locality" is not tenable, appellants' bill was properly dismissed, for several reasons.

(1) I think the suit is in substance against the United States, and therefore not maintainable without its consent. Suits which "would operate to disturb the whole revenue system of the Government" are in effect suits against the United States. Louisiana v. McAdoo, 234 U. S. 627, 632, 34 S. Ct. 938, 58 L. Ed. 1506.[*] So are suits which, like this one, would operate to disturb the whole contracting system of the government. It is settled that a suit to require conformity to law in the performance or cancellation of public contracts is a suit against the United States. Wells v. Roper, 246 U. S. 335, 38 S. Ct. 317, 62 L. Ed. 755; Transcontinental & Western Air, Inc., v. Farley, 71 F. (2d) 288 (C. C. A. 2d), cert. den. 293 U. S. 603; United States ex rel. Shoshone Irrigation Dist. v. Ickes, 63 App. D. C. 167, 70 F. (2d) 771, cert. den. 293 U. S. 571; Boeing Air Transport, Inc., v. Farley, 64 App. D. C. 162, 75 F. (2d) 76, cert. den. 294 U. S. 728. No reason appears for distinguishing in this respect a suit, like the present one, to require conformity to law

[*] So of a suit "to interfere with its management and disposition of the lands or the funds" which the United States holds in trust. Morrison v. Work, 266 U. S. 481, 483, 45 S. Ct. 149, 69 L. Ed. 394. So of a suit to restrain the use in a post office of letter machines which infringe plaintiff's patent. International Postal Supply Co. v. Bruce, 194 U. S. 601, 24 S. Ct. 820, 48 L. Ed. 1134. So of a suit to set aside an order of the Interstate Commerce Commission refusing an increase of railway mail pay. United States v. Griffin, 303 U. S. 226, 238, 58 S. Ct. 601, 82 L. Ed. 764.

the process of entering into public contracts. Johnstown Coal & Coke Co., Inc., v. Wilson, 60 F. (2d) 557.

The heads of six executive departments of the government are here sued in their official capacities. "That the United States is not named on the record as a party is true. But the question whether it is in legal effect a party to the controversy is not always determined by the fact that it is not named as a party on the record, but by the effect of the judgment or decree which can here be rendered." [99] A judgment or decree in favor of the appellants will control the terms on which the United States may enter into contracts for the necessary work of the Departments of Labor, War, Navy, the Treasury, the Interior, and the Post Office. It will thereby regulate the conduct by the United States of vast activities of unquestioned constitutionality and legality. Although it will not prevent those contracts from being made and those activities from being carried on, it will prevent them from being made and carried on on certain terms. It will have a far larger effect upon the United States than the decree which was sought and refused in Wells v. Roper, supra, for that decree would have controlled only a single contract.

The appellants contend that the particular action which the Secretary of Labor has taken and the other appellees propose to take is unlawful. But it is not contended that the Secretary of Labor has no authority to make minimum wage determinations with respect to public contracts for iron and steel, or that the other appellees have no authority to make public contracts for iron and steel. The appellants, then, ask the court to regulate the discharge by the appropriate government officers of their lawful and vital function of supplying the needs of the government. This is not a case in which, if the appellants are right as to the law, the United States has no occasion to act in the premises; there is occasion, on any view of the law, for the United States to act and for these appellees to act in its behalf. The appellants' complaint is merely that appellees act illegally instead of legally. The fact that they may be acting illegally does not make the suit any the less a suit against the United States. On the contrary, if they were acting legally they could, of course, successfully defend their action on that ground, and the immunity of the United States from suit would be comparatively unimportant. It is only when, as here, the government's representatives may be acting illegally that the rule which forbids a suit against the United States has any great significance. In most of the suits which have been decided to be suits against the United States, and therefore not maintainable without its consent, the courts have either assumed that the defendant officers were acting illegally or have refused to consider the alleged illegality of their action.[1] Where, as in Wells v. Roper, the defend-

[99] Louisiana v. McAdoo, 234 U. S. 627, 629, 34 S. Ct. 938, 58 L. Ed. 1506.

[1] E. g., International Postal Supply Co. v. Bruce, 194 U. S. 601, 24 S. Ct. 820, 48 L. Ed. 1134; Louisiana v. McAdoo, 234 U. S. 627, 34 S. Ct. 938, 58 L. Ed. 1506; Wells v. Roper, 246 U. S. 335, 38 S. Ct. 317, 62 L. Ed. 755; United States v. Griffin, 303 U. S. 226, 58 S. Ct. 601, 82 L. Ed. 764

ants have declined to deal contractually with the plaintiff on behalf of the United States, the immunity of the United States has barred the suit, however lawless the action of the defendants may have been. In Wells v. Roper the plaintiff had a contract with the United States; here, the plaintiffs hope to make contracts with the United States. The difference does not strengthen their position.

One who seeks public employment is in a different position from one who seeks private employment. In Truax v. Raich, 239 U. S. 33, 36 S. Ct. 7, 60 L. Ed. 131, the Supreme Court held that a state statute forbidding employment of foreigners in private industry was unconstitutional; but four weeks later, in Heim v. McCall, 239 U. S. 175, 36 S. Ct. 78, 60 L. Ed. 206, it held that a state statute forbidding employment of foreigners on public works was valid. The ground was that the state could freely determine whom it would employ. The privilege of seeking employment by the sovereign is not, like the privilege of seeking private employment, a constitutional right. Private employment, if obtained, results in claims which are constitutionally entitled to enforcement; but employment by the United States, if obtained, results in no enforcible claims unless the United States chooses to allow them. It is anomalous to enforce against the sovereign, without its consent, a privilege of seeking to acquire claims against it which would themselves be unenforcible without its consent. I know of no case in which it has been held that the courts may, without congressional authorization, inquire whether officers of the United States are exceeding their authority, when the only threatened damage consists in the loss of an opportunity to make money by dealing with the United States.

There are, of course, many cases in which, without the sovereign's consent, the action of the sovereign's officers in its behalf has been held controllable by the courts, in apparent derogation of the sovereign's immunity. But in those cases judicial control of the defendant officers was necessary to the protection of the plaintiff's constitutional rights or, at least, of "rights" of a well-established character, i. e., interests to the protection of which, apart from the sovereign's immunity, the plaintiff was clearly entitled. Examples are United States v. Lee,[2] a suit to recover the plaintiff's land, unlawfully withheld by government officers; Ex parte Young,[3] which restrained state officers from enforcing confiscatory railroad rates; Waite v. Macy,[4] which protected plaintiff's right to import harmless and unforbidden tea; and American School of Magnetic Healing v. McAnnulty,[5] which protected plaintiff's right to use the mails.

(2) Statutes in regard to the making of government contracts are intended for the benefit of the government, not of contractors or bidders. American Smelting & Refining Co. v. United States, 259 U. S.

---

[2] 106 U. S. 196, 1 S. Ct. 240, 27 L. Ed. 171.
[3] 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714.
[4] 246 U. S. 606, 38 S. Ct. 395, 62 L. Ed. 892.
[5] 187 U. S. 94, 23 S. Ct. 33, 47 L. Ed. 90.

75, 78, 42 S. Ct. 420, 66 L. Ed. 833. It follows that even an actual bidder, to say nothing of a prospective bidder, cannot complain of the failure of public officers to comply with statutes in regard to the making of contracts. Colorado Paving Co. v. Murphy, 78 Fed. 28 (C. C. A. 8th; opinion by Judge Sanborn), appeal dismissed, 166 U. S. 719; Molloy v. City of New Rochelle, 198 N. Y. 402, 92 N. E. 94; Talbot Paving Co. v. City of Detroit, 109 Mich. 657, 67 N. W. 979; O'Brien v. Carney, 6 F. Supp. 761.[6] In this aspect the case is much as if a private corporation's agent should propose to insert in contracts a term inconsistent with his principal's instructions, and third persons wishing to contract with the principal on the principal's terms should thereupon ask a court to compel the agent to conform to them. The principal is the only person who can require the agent to carry out his instructions.

(3) If one of appellants were to be the sole bidder for any particular contract, the wage determination could do it no substantial harm; it would have only to pay the increased wage, and increase its bid proportionately. That, of course, is not the case. Appellants are subject to competition; and they anticipate that, if the alleged illegal determination is enforced, they will be injured by the competition of other concerns better able to pay the required wage. As they express it, "If the plaintiffs are required to pay the minimum wages fixed in the Determination, there is grave danger that they will no longer be able successfully to compete for Government contracts since large, fully integrated companies enjoying more favorable geographic locations from the standpoint of proximity to sources of supply for the raw materials used by them, proximity to the markets for their products and freight rate differentials should be able to underbid plaintiffs, if the plaintiffs must pay the same minimum wages as such competitors are now paying." But there is no contention that it is illegal to pay, or to promise to pay, 62½ cents per hour. Accordingly, the competition from which appellants anticipate injury will be lawful. And it is settled that one cannot complain of or prevent damage by lawful competition, even though the competition or its damaging character may be due to the action by officers of the United States which is attacked as lawless. Alabama Power Co. v. Ickes, 302 U. S. 464, 58 S. Ct. 300, 82 L. Ed. 374; Tennessee Electric Power Co. v. Tennessee Valley Authority, 306 U. S. 118; Louisiana v. McAdoo, 234 U. S. 627, 631, 34 S. Ct. 938, 58 L. Ed. 1506.

(4) While it is contended that one of appellants has lost one contract, the injury which appellants in general anticipate is too contingent to qualify as irreparable injury and support an injunction. They may not bid, may not be the lowest bidders if they do, may not be awarded a contract if they are the lowest bidders, and may not

[6] There are cases in some states to the contrary; e. g., Boren & Guckes v. Commissioners of Darke County, 21 Ohio St. 311; St. Landry Lumber Co., Ltd., v. Mayor of Bunkie, 155 La. 892, 99 So. 687.

profit from a contract if they get one. Ames & Company v. Wallace, 1 Su. Ct. D. C. (N. S.) 238.[1]

I think the decree of the District Court dismissing the bill should be affirmed.

Tuesday, October 3rd, A. D. 1939

* * * * * * *

No. 7368. October Term, 1939

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, APPELLANTS,

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALFE WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL.

Appeal from the District Court of the United States for the District of Columbia

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed, and that this case be, and it is hereby, remanded to the said District Court with instructions to set aside and vacate its judgment dismissing the complaint, and that said District Court be, and it is hereby, directed to proceed in accordance with the opinion of this Court; costs in this Court to be borne by appellants.

Per MR. JUSTICE MILLER.

OCTOBER 3, 1939.

Dissenting opinion by MR. JUSTICE EDGERTON.

* * * * * * *

---

[1] Affirmed and appeal dismissed, 81 F. (2d) 414.
The lack of irreparable injury is not in itself an answer to plaintiffs' demand for a declaratory judgment. Nashville, C. & St. L. Ry. v. Wallace, 288 U. S. 249, 264, 53 S. Ct. 345, 77 L. Ed. 730.

United States Court of Appeals for the District of Columbia

No. 7368

No. 3056 Original

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, ET AL., APPELLANTS,

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. MCLAUGHEIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALFE WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL., APPELLEES

United States Court of Appeals for the District of Columbia. Filed Oct. 31, 1939. Joseph W. Stewart, Clerk.

Motion to substitute party

Now come appellants and, upon the stipulation annexed hereto as Exhibit A and made a part hereof, respectfully move this Honorable Court to substitute Charles Edison, individually and as Acting Secretary of the Navy of the United States, as a (defendant-) appellee in this cause, in lieu and in place of, and as successor to, Claude Augustus Swanson, deceased, originally joined herein as a (defendant-) appellee, individually and as Secretary of the Navy of the United States, with the same force and effect as if said Charles Edison had been originally named herein as a (defendant-) appellee and as if all statements, references, and provisions in all pleadings, motions, orders, judgments, mandates, and other papers in this cause with respect to, or applicable to, said Claude Augustus Swanson, individually and as Secretary of the Navy of the United States, had originally been made with respect to, or applicable to, said Charles Edison, individually and as Acting Secretary of the Navy.

Dated October 28, 1939.

(Signed) O. MAX GARDNER,
O. Max Gardner,
ROBERTS B. THOMAS,
FREDERICK H. KNIGHT,
Counsel for appellants.

The undersigned consents to the granting of the above motion.

(Signed) TELFORD TAYLOR,
Counsel for appellees and for Charles Edison, Acting Secretary of the Navy of the United States.

Exhibit A

United States Court of Appeals for the District of Columbia

No. 7368

No. 3056 Original

LUKENS STEEL COMPANY, A CORPORATION, ALAN WOOD STEEL COMPANY, A CORPORATION, SOUTH CHESTER TUBE COMPANY, A CORPORATION, ET AL., APPELLANTS

v.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, CHARLES V. MCLAUGHLIN, INDIVIDUALLY AND AS ASSISTANT SECRETARY OF LABOR OF THE UNITED STATES, L. METCALFE WALLING, INDIVIDUALLY AND AS ADMINISTRATOR OF THE DIVISION OF PUBLIC CONTRACTS OF THE DEPARTMENT OF LABOR OF THE UNITED STATES, ET AL., APPELLEES

Stipulation

It is hereby stipulated and agreed by and between counsel for Charles Edison, Acting Secretary of the Navy of the United States, counsel for the appellees in this cause, and counsel for the appellants in this cause:

(1) that Claude Augustus Swanson, originally joined in this cause as a (defendant-) appellee, individually and as Secretary of the Navy of the United States, died on July 7, 1939;

(2) that said Charles Edison is, and since the date of the death of said Claude Augustus Swanson on July 7, 1939, has been, Acting Secretary of the Navy of the United States; does have, and has had, his official residence as such Acting Secretary, and does reside, and has resided, in the District of Columbia; and is, and has been, found in said District;

(3) that said Charles Edison, as Acting Secretary of the Navy, has adopted and continued, adopts and continues, and intends to continue, all action with respect to the subject matter of this cause taken or intended to be taken by said Claude Augustus Swanson, as Secretary of the Navy of the United States; and

(4) that, subject to the approval of this Court, said Charles Edison, individually and as Acting Secretary of the Navy of the United States, may be substituted as a (defendant-) appellee in this cause in lieu and in place of, and as successor to, said Claude Augustus Swanson, deceased, originally joined herein as a (defendant-) appellee with the same force and effect as if said Charles Edison had been originally named herein as a (defendant-) appellee and as if all statements, references, and provisions in all pleadings, motions, orders

judgments, mandates, and other papers in this cause with respect to, or applicable to, said Claude Augustus Swanson, individually and as Secretary of the Navy of the United States, had originally been made with respect to, or applicable to, said Charles Edison, individually and as Acting Secretary of the Navy.

Dated October 28, 1939.

(Signed) TELFORD TAYLOR,
Counsel for appellees and for Charles Edison,
Acting Secretary of the Navy of the United States.
(Signed) O. MAX GARDNER,
(Signed) ROBERTS B. THOMAS,
(Signed) FREDERICK H. KNIGHT,
Counsel for appellants.

Wednesday, November 8th, A. D. 1939

* * * * * * *

Before Honorable D. LAWRENCE GRONER, Chief Justice, in Chambers

* * * * * * *

Nos. 3056 Original; 7368

LUKENS STEEL COMPANY &C ET AL., APPELLANTS

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR &C. ET AL.

On consideration of the motion to substitute Charles Edison, Individually and as Acting Secretary of the Navy of the United States, as a party appellee herein in the place and stead of Claude Augustus Swanson, deceased. It is ordered by the Court that the motion be, and it is hereby, granted.

* * * * * * *

In the United States Court of Appeals for the District of Columbia

No. 7368

LUKENS STEEL COMPANY, ET AL., APPELLANTS

vs.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, ET AL

United States Court of Appeals for the District of Columbia. Filed Nov. 14, 1939. Joseph W. Stewart, Clerk.

Designation of record

The clerk in the preparation of the transcript of record on petition for certiorari to the Supreme Court of the United States will include the following:

1. Printed record.

2. No. 3056 Original—Petition for temporary injunction pending final hearing and determination of cause on appeal (including the index to the attached exhibits, but not the exhibits).

3. No. 3056 Original—Objections to petition for temporary injunction (not including attached exhibits).

4. Affidavits of John W. Logan and George W. Whitney, filed March 22, 1939.

5. No. 3056 Original—Minute entry of argument on petition for temporary injunction.

6. No. 3056 Original—Order granting petition for temporary injunction.

7. No. 3056 Original—Motion for reargument on petition for temporary injunction or for a more specific injunction and security.

8. No. 3056 Original—Objections to motion for reargument on petition for temporary injunction.

9. Minute entry of argument on appeal.

10. No. 3056 Original—Motion to dissolve temporary injunction pending appeal.

11. Order and per curiam opinion of the Court, dated August 4, 1939.

12. Opinions of the Court, dated October 3, 1939.

13. Judgment or decree.

14. Motion, stipulation, and order substituting Charles Edison, Acting Secretary of the Navy, as defendant-appellee, vice Claude Augustus Swanson, deceased.

15. This designation.

16. Clerk's certificate.

ROBERT H. JACKSON,
Solicitor General.

Service of designation of record is acknowledged this 13th day of November, 1939.

O. MAX GARDNER.
ROBERTS B. THOMAS.
FREDERICK H. KNIGHT.

United States Court of Appeals for the District of Columbia

No. 7368

LUKENS STEEL COMPANY ET AL., APPELLANTS

v.

FRANCES PERKINS, INDIVIDUALLY AND AS SECRETARY OF LABOR OF THE UNITED STATES, ET AL., APPELLEES

United States Court of Appeals for the District of Columbia. Filed Nov. 15, 1939. Joseph W. Stewart, Clerk.

Appellants' cross designation of record on certiorari

The appellants respectfully request that the Clerk, in the preparation of the transcript of record on petition for certiorari to the Su-

preme Court of the United States, include therein, in addition to the papers and proceedings designated in appellees' "Designation of Record," the following additional papers and proceedings:

1. No. 3056 Original—that portion of Exhibit C to Appellees' "Objections to Petition for Temporary Injunction" (designated and numbered 3 in Appellees' said designation) which is entitled "Points and Authorities on Motion to Dismiss."

2. Minute entry of November 8, 1939, showing granting of motion to substitute Charles Edison, Individually and as Acting Secretary of the Navy of the United States, as a party appellee.

3. No. 3056 Original—Minute entry of November 8, 1939, showing granting of motion to substitute Charles Edison, Individually and as Acting Secretary of the Navy of the United States, as a party appellee.

4. This cross designation.

O. MAX GARDNER,
O. Max Gardner,
ROBERTS B. THOMAS,
Roberts B. Thomas,
FREDERICK H. KNIGHT,
Frederick H. Knight,
Attorneys for Appellants.

Service of the foregoing cross designation is acknowledged this 15th day of November 1939.

ROBERT H. JACKSON,
Solicitor General.

United States Court of Appeals for the District of Columbia

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 455, inclusive, constitute a true copy of the transcript of the record and proceedings of the said Court of Appeals as designated by counsel in the case of Luckens Steel Company, a Corporation; Alan Wood Steel Company, a Corporation, South Chester Tube Company, a Corporation, et al., Appellants vs. Frances Perkins, Individually and as Secretary of Labor of the United States; Charles V. McLaughlin, Individually and as Assistant Secretary of Labor of the United States; L. Metcalfe Walling, Individually and as Administrator of the Division of Public Contracts of the Department of Labor of the United States, et al., Nos. 3056 Original and 7368, October Term, 1939, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 24th day of November, A. D. 1939.

[SEAL]

JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia.

U. S. GOVERNMENT PRINTING OFFICE: 1939

Supreme Court of the United States.

Order allowing certiorari

Filed February 5, 1940

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

GOVERNMENT PRINTING OFFICE 1940